RECLAMATION REFORM ACT OF 1981

HEARINGS
BEFORE THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS

FIRST AND SECOND SESSIONS

ON

S. 1867

A BILL TO AMEND AND SUPPLEMENT THE ACREAGE LIMITATION AND RESIDENCY PROVISIONS OF THE FEDERAL RECLAMATION LAW, AS AMENDED AND SUPPLEMENTED, AND FOR OTHER PURPOSES

WASHINGTON, D.C., DECEMBER 10, 1981
BOISE, IDAHO, JANUARY 11, 1982

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RECLAMATION REFORM ACT OF 1981

THURSDAY, DECEMBER 10, 1981

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 9:10 a.m., in room 3110, Dirksen Office Building, Hon. James A. McClure, chairman, presiding.

Present: Senators McClure, Domenici, Nickles, and Bumpers.

Also present: Gary Ellsworth, counsel; and Craig Hannett, counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. The committee will come to order.

Good morning, ladies and gentlemen. This is the time scheduled for the Committee on Energy and Natural Resources to hear testimony on S. 1867, a bill to amend and supplement the acreage limitation and residency provisions of the Federal Reclamation Act.

In deference to the long list of witnesses and the time constraints that confront us today, I will insert the balance of my remarks in the record at this point with only one statement on the record, and that is we do intend to act on this legislation.

[The prepared statement of Senator McClure and additional material follow:]

OPENING STATEMENT OF HON. JAMES A. MCCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

In deference to the many witnesses who are scheduled to testify and who have travelled thousands of miles to be with us, I will keep my remarks short.

In the 95th, the 96th and now the 97th Congresses, the committee and the Congress have taken up the formidable task of trying to modernize and restate congressional policy towards the reclamation program as initiated by the 1902 Reclamation Act. As evidenced in the many hours of hearings and the long debate on the floor in the last Congress, it is not easy to reconcile often diametrically opposed viewpoints with almost eighty years of history.

As the hearing progresses today, the committee no doubt will be bombarded with statistics, and numbers, and facts. All of which will be used to support the views of the respective witness. But I would make the following cautionary statement. We must all, committee members and witnesses alike, keep in mind that what we advocate or do affects the lives and livelihoods of thousands of people who are now reclamation farmers—and untold thousands who aspire to benefit from the reclamation program in the future.

I would urge all of us to remember that what we have before us is not a new program, but the cumulation of 80 years of hard work—of generations. Reclamation farmers are among the best farmers in the United States, and they are the best in the world. Let us proceed with caution so that we may not undo that which we seek to nurture.

Without objection I ask that the text of S. 1867 and the related departmental reports be inserted in the hearing record at this point.

I will also insert at this point statements from Senators Domenici, Wallop, Goldwater, and Baucus.

97TH CONGRESS
1ST SESSION

S. 1867

To amend and supplement the acreage limitation and residency provisions of the Federal reclamation law, as amended and supplemented, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18 (legislative day, NOVEMBER 2), 1981

Mr. MCCLURE (for himself, MR. JACKSON, Mr. ABDNOR, Mr. DOMENICI, Mr. GOLDWATER, Mr. HATCH, Mr. HAYAKAWA, Mr. LAXALT, Mr. SIMPSON, Mr. SYMMS, and Mr. WALLOP) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend and supplement the acreage limitation and residency provisions of the Federal reclamation law, as amended and supplemented, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall amend and supplement the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. 371), hereinafter referred to as the "Federal reclamation law".

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "Secretary" means the Secretary of the Interior.

(b) The term "irrigation water" means water made available for agricultural purposes from the operation of reclamation project facilities pursuant to a contract with the Secretary.

(c) The term "district" means any individual, or any legal entity established under State law, which has entered into a contract with the Secretary for irrigation water.

SEC. 3. The provisions of the Federal reclamation law shall remain in full force and effect, except as amended in title I of this Act, or as may be inconsistent with title II of this Act as it applies to those electing to qualify under title II provisions.

TITLE I—RECLAMATION REFORM

RESIDENCY REPEALED

SEC. 101. Notwithstanding any other provision of law, hereafter irrigation water made available from the operation of reclamation project facilities shall not be withheld from delivery to any project lands for the reason that the owners, lessees or operators thereof may not live on or near them.

EQUIVALENCY

SEC. 102. Wherever an acreage limitation is imposed by the Federal reclamation law, including this Act, the Secretary upon the request of a contracting entity shall designate by rule lands under the applicable acreage limitation within a district classified as having class I productive potential or the equivalent thereof in other lands of lesser productive potential. Standards and criteria for determination of land classes pursuant to this authority shall take into account all factors which significantly affect the economic feasibility of irrigated agriculture, including but not limited to, soil characteristics, crop adaptability, costs of crop production, and length of growing season.

RECORDABLE CONTRACTS

SEC. 103. (a) Irrigation water made available in the operation of reclamation project facilities constructed after the enactment of this Act may not be delivered for use in the irrigation of lands held in excess of the acreage limitations imposed by the Federal reclamation law, including this Act, unless and until the owners thereof shall have executed a recordable contract with the Secretary requiring the disposal of their interest in such excess lands within a reasonable time. Such reasonable time shall be established by the Secretary, but shall not exceed ten years after the initial delivery of such water to those lands under terms and conditions required by reclamation laws generally.

(b) Lands held in excess of the acreage limitations imposed by the Federal reclamation law, including this Act which, on the date of enactment of this Act, are receiving delivery of irrigation water made available by the operation of existing reclamation project facilities may continue to recieve such deliveries only: (1) if the disposal of the owner's interest in such lands is required by an existing recordable contract with the Secretary, or (2) if the owners of such lands are actively engaged in good faith negotiations with the Secretary for such contracts: *Provided*, That such deliveries shall continue for a period of not more than one year after the enactment of this Act if such a contract shall not by then have been executed.

(c) All recordable contracts covering excess land sales shall provide that a power of attorney shall vest in the Secretary to sell any excess lands not disposed of by the owners thereof within the period of time specified in the contracts. In the exercise of that power, the Secretary shall sell such lands through an impartial selection process according to such reasonable rules and regulations as he may establish: *Provided*, That the Secretary shall recover for the owner the fair market value for the land and improvements thereon unrelated to irrigation water deliveries.

(d) The periods of time for which the disposal of excess lands may have been required under recordable contracts executed under the Federal reclamation law, including this Act, are hereby, and in the future shall be, extended for the period of time in which the Secretary shall have withheld the processing or approval of the disposition of such lands, whether he may have been compelled to do so by court order or whether he may have declined to do so for other reasons, and shall be added to the period provided by such contracts.

(e) Excess lands which shall have been disposed of to comply with the terms of recordable contracts executed pursuant to this Act may continue to receive irrigation water only—

(1) if they are held by nonexcess owners under this title, or qualified recipients under title II; and

(2) if their title is burdened by a covenant prohibiting their sale, for a period of ten years after their original disposal to comply with the Federal reclamation law or title II of this Act, for values exceeding the sum of the value of newly added improvements and the value of the land as increased by market appreciation unrelated to the delivery of irrigation water. Upon expiration of the terms of such covenant, the title to such lands shall be freed of the burden of any limitation on subsequent sale values which might otherwise be im-

posed by the operation of section 432e of title 43, United States Code.

CORPS OF ENGINEERS PROJECTS

SEC. 104. Notwithstanding any other provisions of law to the contrary, neither the acreage limitation requirements nor other provisions of the Federal reclamation law, including this act, shall be applicable to lands receiving benefits from Federal water resources projects constructed by the United States Army Corps of Engineers unless—

(a) the project has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal reclamation project; or

(b) the Secretary of the Interior, pursuant to his authority under the Federal reclamation law has provided project works for the control or conveyance of an agricultural water supply for the lands involved; or

(c) the provisions of the Federal reclamation law are, by Federal statutes, explicitly made applicable to the lands involved.

LEASING

SEC. 105. Except as provided in title II of this Act, lands which are leased, or subject to an option to lease by any lessee shall not be considered in the application of the acreage limitations provisions of the Federal reclamation law to the landholding of the lessee.

APPLICABILITY

SEC. 106. Neither the limitations and restrictions imposed by this Act nor any other provision of the Federal reclamation law shall prohibit the delivery of irrigation water for the irrigation of any lands:

(a) after the obligation of a district for the repayment of the construction costs of the project facilities used to make water available for delivery to such lands shall have been discharged, whether by payment of a single lump sum, by payment of periodic installments throughout a specified contract term or by such payments made on an accelerated schedule chosen by the obligor: *Provided*, That where any contract has been or may be entered into pursuant to the authority of the Rehabilitation and Betterment Act (Act of October 7, 1949, 63 Stat. 724, as amended), the contracting entity shall have the additional option of adopting a form of repayment consistent with section 5(c)(2) of the Small Reclamation Projects Act of 1956 (Act of August 6, 1956, 70 Stat. 1044, as amended) and if such form of repayment is adopted, the acreage limitation provisions of the Federal reclamation law shall not apply solely as a result of the indebtedness under such contract: *Provided further*, That the appropriate contracting entity or owner or owners of land with respect to which the contractual repayment obligation shall have been discharged may request, and the Secretary shall provide, a recordable certificate acknowledging that the acreage limitation provisions of the Federal reclamation law no longer apply to such lands;

(b) so long as the lands thus supplied are held by a bona fide religious or charitable organization using the agricultural produce from the land or the proceeds of the sales thereof for charitable purposes;

(c) so long as the lands are held by a trustee, individual or corporate, in a fiduciary capacity for a beneficiary or beneficiaries whose interests in the lands served do not exceed the limits imposed by the Federal reclamation law or title II of this Act;

(d) when the lands served receive only a temporary, not to exceed one year, supply made possible as a result of—

(1) an unusually large water supply not otherwise storable for project purposes; or

(2) infrequent and otherwise unmanaged flood flows of short duration;

(e) acquired by involuntary foreclosure, or similar involuntary process of law, by bona fide conveyance in satisfaction of mortgage, by inheritance, by devise: *Provided,* That if, after acquisition, such lands are not qualified under the Federal reclamation law, including this Act, they shall be furnished temporarily with a water supply for a period not exceeding ten years from the effective date of such acquisition;

(f) which are isolated tracts found by the Secretary to be economically farmable only if they are included in a larger farming operation but which may, as a result of their inclusion in that operation, cause it to exceed the acreage limitations of the Federal reclamation law, including this Act;

(g) served with a temporary supply of irrigation water under contract conditions permitting the withdrawal of such water from such lands for later use for municipal and industrial purposes;

CONTRACT REQUIRED

SEC. 107. Irrigation water temporarily made available from reclamation facilities in excess of ordinary quantities not otherwise storable for project purposes or at times when such water would not have been available without the operations of those facilities, may be used for water quality, irrigation, municipal, or industrial purposes only to the extent covered by a contract requiring payment for the use of such water, executed in accordance with the Reclamation Project Act of 1939, or other applicable provisions of the Federal reclamation laws.

VALIDATION

SEC. 108. (a) Any provision of any contract between the Secretary and any party to a contract dealing with matters arising under the Federal reclamation laws generally may be validated at the request of any non-Federal party to such contract made to the Secretary within three years after the enactment of this Act.

(b) Written representations relating to the acreage limitation provisions of Federal reclamation law which were in effect or made prior to the effective date of this Act by the Secretary of the Interior or his authorized agents on behalf of the United States, with or for the benefit of a contracting entity may be validated at the request of any non-Federal party to whom such written representation was made within three years after the enactment of this Act.

(c) The Secretary shall, within ninety days after the receipt of such request under subsection (a) or (b), transmit it with his comments and recommendations to the Congress. Unless the Congress, by joint resolution disapproves the application within ninety days from the date on which it receives the Secretary's transmittal, the contractual provision or written representation, which is the subject of the request shall be deemed to have been validated.

CONSENT TO SUE

SEC. 109. In addition to any other remedy available in law or equity, any party to a contract with the Secretary providing for water service or for the repayment of the construction costs of Federal reclamation project facilities used to produce irrigation water may bring an action in the United States district court for the district in which the project facilities are located, and only in such district, for mandatory injunctive or other appropriate relief to adjudicate, confirm, validate, or decree the contractual right of any person or entity, including but not limited to any contracting entity, who is the beneficiary of any such contract and to reform such contract in accordance with the terms of any written representation concerning the application or interpretation of the Federal reclamation law including this Act, or contracts made by the Secretary or his representative to such party or his predecessor in interest. Exclusive jurisdiction for such suit is hereby vested in the United States district court. In the case of written representation, if the court finds, on the basis of the evidence submitted, that the party would not have entered into the contract or accepted the interpretation of the contract but for the written representations made by the Secretary or his representative, which were relied on by those using such irrigation water, then the court shall order the Secretary to reform the contract to conform with the representations, and the contract, as reformed, shall be considered valid as of the date of the written representation.

ADMINISTRATIVE PROVISIONS

SEC. 110. (a) Nothing in this Act shall repeal or amend any existing statutory exemptions from the acreage limitation provisions of the Federal reclamation law.

(b) The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this Act and other provisions of Federal reclamation law.

(c) Section 3 of the Act of July 7, 1970 (43 U.S.C. 4256) is amended by striking the phrase "for a period not to exceed twenty-five years" following the term "project water".

(d) Any nonexcess land which is acquired into excess status pursuant to foreclosure or other process of law, conveyance in satisfaction of mortgage, inheritance, or devise, may be sold at its fair market value without regard to any other provision of this Act or to section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes," approved May 25, 1926 (43 U.S.C. 423e): *Provided,* That if the status of mortgaged land changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process by law, by bona fide conveyance in satisfaction of the mortgage, such land may be sold at its fair market value.

(e) Beginning October 1, 1982, there are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

TITLE II—OPTIONAL EXPANDED OWNERSHIP

DEFINITIONS

SEC. 201. As used in this title:

(a) The term "individual" means any natural person, including his or her spouse, and including other dependents thereof within the meaning of the Internal Revenue Code (26 U.S.C. 152).

(b) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law, which benefits twenty-five such individuals or less.

(c) The term "landholding" means total irrigable acreage of one or more tracts of land owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary.

(d) The term "full cost" means all construction costs of facilities in service which are properly allocable to irrigation, plus all operation and maintenance deficits funded, less credit for payments, with interest on both accruing from the date of a new or amended contract pursuant to this title on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the new or amended contract, and shall be calculated on the basis of the computed average interest rate payable by the Treasury upon its marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance.

AMENDMENTS OF CONTRACTS

SEC. 202. Any provision of any contract existing between the Secretary and any party pursuant to Federal reclamation laws as of the date of enactment of this Act may be amended to conform with the provisions of this title, and the Secretary shall so amend such contractual provisions at the request of the non-Federal party to such a contract. The provisions of this title shall become applicable to any such contract and to such party only upon amendment of the contract.

DELIVERY OF WATER

SEC. 203. (a) Upon the amendment of a district's contract to conform to the provisions of this title, and notwithstanding any other provisions of the law to the contrary, irrigation water may be delivered to a qualified recipient for use in the irrigation of a landholding of not more than three thousand two hundred acres of class I lands, or the equivalent thereof: *Provided*, That not more than one thousand sixteen hundred acres of such landholding may be owned by the qualified recipient: *Provided further*, That lands leased for a term of one year or less for the purpose of water management and conservation in years of inadequate project water supply shall not be considered as part of a landholding solely because of having been so leased.

(b) Irrigation water may be delivered to lands leased in excess of a landholding of three thousand two hundred acres or the equivalent thereof as described in subsection (a), only if "full cost" as defined in subsection 201(d) of this Act is paid for such water as is assignable to those lands leased in excess of a landholding of one thousand six hundred acres.

(c) In determining whether a landholding exceeds three thousands two hundred acres, the Secretary shall add to any landholding held directly by an individual, whether by ownership or lease, that portion of any landholding held by a legal entity or entities operating as a qualified recipient from which that individual benefits as an owner in proportion to that ownership.

(d) For the purpose of applying the full cost provisions of this section, the Secretary shall apply a duty of water to lands within a given district based upon the average duty of project water delivered to lands within the district each year for a period of five years preceding the year in which water is currently being delivered. Absent such a history, the Secretary shall consider the average duty of water for such period of time as may be available, and such other pertinent data as he may determine.

TITLE III—LEASING REQUIREMENTS

SEC. 301. Notwithstanding any other provision of the Federal reclamation law including this Act, lands which receive irrigation water may be leased only if the lease instrument is—

(1) written; and

(2) for a term not to exceed ten years, including any options exercisable by the lessor.

In addition, the Secretary shall be provided with a certificate signed by the lessee which includes a legal description of the leased land, the term of the lease, and a certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land.

SEC. 302. Any lease in effect as of the date of this Act shall be required to comply with the provisions of this Act within ten years of enactment of this Act.

○

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

December 7, 1981

Honorable James A. McClure
Chairman, Senate Committee on
Energy and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for this Department's views on S. 1867, a bill "To amend and supplement the acreage limitation and residency provisions of the Federal reclamation law, as amended and supplemented, and for other purposes."

This Department would support S. 1867 if it is amended as suggested in this report.

General Principles

We are supportive of your efforts to find legislative solutions to the problems created by the 1902 Act. We believe the 1902 Reclamation Act is outdated and reclamation reform is therefore badly needed. Further, the Department is under court order to promulgate regulations consistent with the 1902 Act's 160 acre limitation. We believe that the promulgation of regulations to require the disposal of lands in excess of 160 acres will create chaos in the real estate markets and be unfair to farmers and other landholders.

Our comments on S. 1867 reflect this Department's underlying concepts for reclamation reform. First, we believe that the traditional farm concept should be retained. We support a 960 acre limitation for the delivery of subsidized water and believe that, above that limitation, users should pay full cost for water. Second, we believe that once users pay full cost there should be as little regulation by the Federal Government as possible.

Although we agree with the basic outlines of the bill, we recommend a simpler approach to acreage limitations. Rather than the Title I/Title II distinction contained in the bill as drafted, we recommend a 960 acre limitation for the delivery of subsidized water. We also support the concept of unlimited leasing contained in the S. 1867 but we believe the full cost provisions should apply for lands in excess of 960 acres. We prefer the elimination of the Title I/Title II distinction because, under Title I, there is no provision for full cost payment.

We recommend the following concepts be incorporated into a single section:

a. Irrigation water will be delivered to a landholding of 960 acres or its equivalent at the contract rate based on ability to pay.

b. Irrigation water may be delivered to a landholding of unlimited size if the excess land is operated under lease and full cost is paid for water delivered to such excess land.

c. Proportional ownership should be used to determine whether a landholding exceeds 960 acres.

d. A grandfather clause will be included for existing leases for a term not to exceed 10 years and recordable contracts until they expire.

Our suggested language to accomplish this purpose is included as an attachment.

Under the approach we recommend, farm operators who are in compliance with the existing law as it has been administered would be permitted to continue their operations without the application of the full cost concept to land in the operation in excess of 960 acres in cases where the excess acres are, at the date of enactment of the legislation, either held under a valid written lease for a term not to exceed 10 years or are subject to sale under a recordable contract. While we do not believe that the "rules of the game" should be changed for those operations for which written commitments have been made, we believe it is fair to require payment of full cost for lands above 960 acres in new projects and in those current operations that can be conformed to the requirements of this legislation without invalidating existing written commitments the farm operator has made.

Although we recognize that the interest rate contained in S. 1867 is higher than the interest rate contained in the House version of reclamation reform legislation, we recommend an interest rate that more accurately reflects the fact that the cost of money to the government is currently based on relatively short term instruments. We recommend instead that the definition of the term "full cost" in section 201(d) read as follows: "The term 'full cost' means all construction costs of facilities in service which are properly allocable to irrigation, plus all operation and maintenance deficits funded, less credit for payments, with interest on both accruing from the date of enactment of this Act on costs outstanding at that date, or, in the case of new contracts, from the dates the costs are incurred, plus current operation and maintenance costs. The interest rate used pursuant to this Act shall be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with approximately 5 years remaining to maturity during the month preceding the date of enactment of this Act on costs outstanding as of that date, or, in the case of new contracts, during the month preceding the fiscal year in which the costs are incurred. The interest rate so determined on the unrecovered balance shall be redetermined every 5 years to reflect the average market yield at that time on outstanding marketable obligations with approximately 5 years remaining to maturity."

Other provisions in S. 1867 that we support include the repeal of the residency requirement contained in section 101. In addition, we interpret section 102 as applying class I equivalency on a district basis, which we support. This conforms with practices that have been followed in the past for the 18 projects for which the use of class I equivalency has been authorized.

However, we believe that the use of class 1 equivalency should be limited to areas with a shorter growing season. It is only in those areas that the need for class 1 equivalency might exist if, in fact, it will exist anywhere after provision is made for a 960 acre limitation. The Department considers a number of factors in determining the formula to apply equivalency including the crops produced and the length of the growing season. Class I equivalency has not been used in projects with a frost-free growing season of more than 180 days. Thus to accomodate the need for equivalency, we would suggest that the following sentence be inserted at the end of section 102: "The Secretary may apply class I equivalency only to those districts where a majority of the irrigable land has a frost-free growing season of 180 days or less based on records published by the Department of Commerce."

Finally, we support the provisions of S. 1867 that provide for exemption of Corps of Engineers projects from the reclamation laws and for various other exceptions from the application of the acreage limitation requirements.

Our further suggested technical amendments are outlined below.

Specific Amendments

In section 2(c) of S. 1867, we recommend the words "individual, or any legal" and the phrase "established under State law," be deleted and the following phrase be added at the end of the subsection: "or is eligible to contract with the United States for irrigation water." This would broaden the application of the bill to include districts which do not now have a contract with the United States and would make the definition compatible with other recommended changes.

As noted above, we believe that the distinction between Title I and Title II in S. 1867 is inadvisable. We recommend that section 3 be revised to delete the reference to Title I and Title II, as follows: "The provisions of the Federal reclamation laws shall remain in full force and effect, except to the extent such laws are amended by, or are inconsistent with, this Act."

Section 103 covers recordable contracts between owners of land and the Secretary of the Interior. We support this section with the modifications discussed below.

Section 103(a) provides that the disposition period for a recordable contract begins when water deliveries begin. There may be a time lag between the execution of a recordable contract and the initial delivery of irrigation water. In order to establish a definite disposition period for the recordable contract, we recommend the disposition period begin when the recordable contract is executed. This would be consistent with current practices for handling recordable contracts and can be accomplished by revising the last sentence in the section to read as follows: "Such reasonable time shall be established by the Secretary, but shall not exceed 10 years after the recordable contract is executed by the Secretary in accordance with terms and conditions required by Federal reclamation laws generally."

In subsection (b) we recommend that lines 11 through 15, on page 4, be deleted and the following phrase be inserted: "have requested that a recordable contract be executed by the Secretary." Recordable contracts are in a standard form and are not subject to negotiation by the landowner.

Section 103(e) should apply to all excess lands subject to recordable contracts under all Federal reclamation laws, not only to those recordable contracts executed "pursuant to this Act." To clarify this, we recommend lines 10 through 13, on page 5, be deleted and the following phrase be inserted: "Excess lands which have been disposed of in compliance with Federal reclamation laws may be considered eligible to receive irrigation water made available through the operation of reclamation project facilities only:".

Section 104 exempts Corps of Engineers projects from application of the reclamation laws. We support this exemption. Projects which are built primarily for purposes such as flood control should not be subject to acreage limitations. Any special costs or proposed acreage limitation requirements are more properly considered in the specific legislation authorizing these types of projects.

Section 105 is not required with the revisions to the bill we are proposing and should be deleted.

Section 106 contains various additional exceptions and exemptions from the acreage limitations and other provisions of the reclamation law which might otherwise prohibit the delivery of irrigation water. They cover (1) projects which have completed repayment of construction costs; (2) charitable organizations; (3) a fiduciary for a beneficiary whose interests do not exceed the acreage limitations; (4) land using temporary water supplies; (5) lands acquired by involuntary foreclosure; (6) isolated tracts; and (7) lands served with a temporary supply which may later be withdrawn for municipal and industrial purposes. We support these provisions, with the technical amendments discussed below.

In applying the exemption that would be provided by the bill to projects which have completed repayment of construction costs, we believe the exemption should be applied on a district basis and not to an individual landholding. Our repayment and water service contracts are with districts, not with individual landowners. The obligation of the district is tied to all land in the district that is benefited by the Federal project and, thus, any exemption on the repayment of the obligation should apply to the entire district. Further, the granting of exemptions to individuals on the basis of a payout within a district could create a checkerboard pattern in a given district, making the administration of the law significantly more difficult in that district. To eliminate this possibility, we recommend the words "for the irrigation of any lands", on line 5, page 7, be deleted.

In section 106(a) we recommend that the words "to make water available for delivery to such lands" on line 8, page 7, be deleted and "for delivery of irrigation water to lands in the district" be inserted; on line 24 and 25, page 7, that "contracting entity or owner or owners of land" be deleted and "district" be inserted; and on line 5, page 8, that "such lands" be deleted and "district" be inserted. These changes will accomplish our goal of providing exemptions for repayment on a district basis and will simplify administration of the program.

We believe the proviso in section 106(a) is unclear. If the intent is to ensure that funds advanced to a district for a rehabilitation and betterment program under the authority of the Rehabilitation and Betterment Act and the contract between the district and the United States for the repayment of those funds is not the basis for imposing, continuing or reimposing the acreage limitation provisions of Federal Reclamation law on that district, we fully agree with it. We do not consider funds advanced for a rehabilitation and betterment program as construction costs but rather as maintenance costs and do not require compliance with acreage limitation based on such advances. We recommend this position be explicitly set forth in a separate section of the bill. We will be happy to work with you to develop appropriate language to accomplish this objective.

Under subsection 106(e), land acquired by involuntary foreclosure, including excess land that was not eligible for water before the foreclosure, would become eligible to receive project water for a 10-year period. We believe that only land which was eligible before foreclosure and which becomes ineligible after foreclosure because it would exceed the acreage limitations should be permitted to receive water for the 10-year period. To permit ineligible excess land to become eligible for water through involuntary foreclosure could invite friendly foreclosures for the purpose of making ineligible excess land eligible for water for a 10-year period. We recommend that S. 1867 be amended by inserting the words "provided such lands were eligible to receive water prior to foreclosure" after the word "foreclosure," on line 22, page 8. We believe the 5 year disposition period provided in existing law provides ample time to a landowner to sell land that has been acquired involuntarily and should be retained. We therefore recommend that the word "ten" on line 3, page 9, be deleted and the word "five" be substituted in lieu thereof.

Section 107 requires that a contract requiring payment for irrigation water made available on a temporary basis be executed in accordance with the Reclamation Project Act of 1939 and other applicable provisions of the Federal reclamation laws. We have no objection to this provision.

Section 108 would establish a procedure for the validation of provisions of contracts between the United States and water user entities at the request of the water user entity. As written it would only apply to requests submitted within three years after the enactment of the Act. The request would be submitted to the Secretary of the Interior who would forward it to the Congress along with his recommendations within 90 days. If Congress did not disapprove the request within 90 days the contract provisions would be considered validated.

The effect of section 108 could be to validate various provisions that may be in conflict with the acreage limitations and other provisions established by the Act as well as other Federal reclamation laws. The section would permit the validation of a particular provision of a contract rather than the entire contract. If any of these situations were to occur the administration of reclamation law and the contract could become much more complicated than it is now.

Furthermore, we believe that virtually all questions which this section has been designed to cover relate to payout, and since payout is already covered under section 106(a), we see no necessity for the inclusion of this provision. Without a showing of compelling need for validation and given the problems this provision could create, we recommend that the validation provision be deleted from the bill.

Section 109 provides that actions involving contractual disputes between water users and the Secretary will be heard in the United States district court for the district in which the project facilities are located. It also gives the court authority to reform contracts based on any written representations made by the Secretary or his agents. We have no objection to this section but we recommend that the word "produce" on line 6, page 11, be deleted and the words "store and deliver" be inserted in lieu thereof in order to clarify the provision.

Section 110 covers various administrative provisions. We have no objection to any of these subsections.

In order to clarify that all land held by a qualified recipient in all projects receiving a Federal project water supply will be included in determining the applicability of the acreage limitations to that recipient, we recommend the definition of the term "landholding" in subsection 201(c) be amended to read as follows: "The term 'landholding' means the total irrigable acreage of one or more tracts of land in all projects governed by Federal reclamation law owned or operated under a lease by a qualified recipient which is served with irrigation water under a contract with the Secretary."

There are two remaining provisions we believe should be added -- a provision for enforcement of the Act through civil penalties and a severability provision.

With the changes outlined herein we believe the Congress will have achieved the critically needed reform of the reclamation laws. We would be pleased to supply a drafting service to the committee if requested which would incorporate the above suggestions into the bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

James G. Watt

SECRETARY

Enclosure

Attachment

"Acreage Limitation"

(a) Nothwithstanding any other provision of Federal reclamation laws, a landholding shall be considered within the limitation on acreage of land which may be served irrigation water at the rate specified in the district's contract with the United States to the extent that it does not exceed 960 acres or the equivalent thereof, where applicable.

(b) Irrigation water may be delivered to a landholding in excess of 960 acres or the equivalent thereof, where applicable, only if the excess land is operated under a lease and full cost is paid for water deliveries to the land in the landholding that is in excess of 960 acres: Provided, That such excess land is in an ownership that does not exceed 960 acres that can be served with irrigation water or is subject to a recordable contract or is otherwise eligible to receive irrigation water.

(c) In determining whether a landholding exceeds 960 acres, the Secretary shall add to any landholding held directly by an individual, whether by ownership or lease, that portion of any landholding held by a legal entity or entities operating as a qualified recipient from which that individual benefits in proportion to the interest of the individual in the legal entity or entities, except that, in the case of any landholding held by any such legal entity in which ownership shares are publicly traded, the interest of any individual in such entity shall not be considered in determining such individual's landholding.

(d) The provisions of this section shall not apply to land in any landholding that, at the date of the enactment of this section, is held under a valid written lease for a term not to exceed ten years or is subject to sale under a recordable contract, until such time as such lease expires or is amended or such land is sold under such contract or such contract expires or is amended.

DEC 7 1981

Gary E.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

DEC 7 1981

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 8 1981
WASHINGTON, D.C. 20510

Honorable James A. McClure
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Your Committee has before it S.1867, 97th Congress, to amend Federal reclamation law. With the clarification recommended in this report, we support enactment of Section 104 of S.1867.

Section 104 of S.1867 is intended to provide a clear statement that reclamation law is to apply to lands benefitted by water resources projects constructed by the U.S. Army Corps of Engineers only in circumstances where required explicitly by Federal statute or where the Secretary of the Interior, pursuant to his authority under the Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved. We support this objective. We recommend that to ensure achieving this intended objective, the words "shall be" on line 7, p.6 of S.1867, should be deleted and replaced with the word "are."

OMB has advised that there is no objection to the presentation of this statement from the standpoint of the Administration's program.

Sincerely,

WRGianelli
William R. Gianelli
Assistant Secretary of the Army
(Civil Works)

STATEMENT OF SENATOR PETE V. DOMENICI
AT HEARING OF ENERGY AND NATURAL RESOURCES COMMITTEE ON S. 1867
DECEMBER 9, 1981

Mr. Chairman,

I want to thank you and the committee for holding this hearing on S. 1867 at this time because it emphasizes the critical need for amending the 1902 Reclamation Law. I am a co-sponsor of this bill and like many of us that come from the Western States, feel Congress once and for all must face up to the fact that the 1902 Reclamation Law must be changed.

In its time the 1902 Reclamation Act was an excellent law. However, time does march on and today any relationship between the law and some of its provisions and the reality of modern agriculture in the United States have long ago slipped into the history books.

During the course of this hearing we are going to receive information on many reclamation projects and many of the details pertaining to why this law needs changing.

I would like to limit my remarks regarding the Reclamation Act to its purpose and the subject of whether or not that purpose has been achieved and continues to be achieved.

In his first measure to Congress, President Theodore Roosevelt said:

> " The forests alone cannot, however, fully regulate and conserve waters of the arid region. Great Storage works are necessary to equalize the flow of streams and to save the flood waters. Their construction has been conclusively shown to be an undertaking too vast for private effort. Nor can it be best accomplished by the individual states acting alone."

President Roosevelt recognized that the settlement of federally reclaimed arid land as a central but separate issue which justified Federal involvement:

> " The policy of the National Government should be to aid irrigation in the several states and territories in such a manner as will enable the people in the local communities to help themselves and it will stimulate needed reforms in state laws and regulations governing irrigation."
>
> " Our people as a whole will profit, for successful homemaking is but another name for the upbuilding of the Nation."

Mr. Chairman, I would submit that in spite of what some voices may say, President Roosevlet's views have been vindicated by time.

It would seem to me that what President Roosevelt was saying was that the waters should be stored in order that they be put to a beneficial use (in this case irrigation) and at the same time this would provide homes and opportunities for millions of Americans.

During their debate on this law in 1902, Congressman Jones of Washington said:

> " The great object of this bill is to furnish homes for the homeless and farms for the farmless."

As I look across my state of New Mexico, I view with pride what I see today in our reclamation projects and in the nearby communities. If President Roosevelt were alive I think he also would look with pride at what has occured since passage of the Reclamation Act.

I see farms, I see schools, I see businesses and i see communities that would not have been there but for the Reclamation Act. I see people, productive people, who have in these communities established a way of life that in essence tells us what America is all about.

Now some would call this program a subsidy and I would suppose that is probably true. But to those people I would say this nation has more than received its fair payment. The consumers of this nation have been insured that they will be provided with a supply of food the year round at a reasonable cost. The taxpayers of this country have found that these projects have stimulated the economy to such a degree that the increased economic activity has created new tax revenue at the local, state and national level which has more than paid off any original cost to the government.

Here, in the Washington D.C. area, the federal government has seen fit to fund a mass transit system with billions of dollars but yet we hear very little talk of subsidy or pork barrel. I could point out program after program that we in Congress fund that are in fact subsidies.

Does this mean they are not good programs? I would submit that the word subsidy does not automatically mean something bad. I would submit to you that critics of subsidies see a program that does not directly impact on them as a bad program while programs that do impact on them as being something good. The final analysis must be based on the national benefit produced based on the amount of subsidy.

Any person who looks at what this nation was trying to do when this program began must admit that it has worked.

The Reclamation Act was a good law but now we must recognize that time has marched on and that the easy questions regarding farm size and residency which were readily answerable in 1902 no longer can withstand close scrutiny. These are the questions we are trying to resolve with this bill and I think what we have come up with are provisions to answer those questions.

In closing I would say that I hope that Congress recognizes the real world we live in today and recognizes the changes that have taken place in not only agriculture but in our society as a whole. The Reclamation Act of 1902 needs to be modernized in order that thousands of farmers and their families can go about their business of doing what they do best. That is, producing the food and fiber that our consumers demands at a reasonalbe price and at the same time maintain their role as one of societies most stabilizing forces.

STATEMENT OF SENATOR MALCOLM WALLOP

Senate Energy and Natural Resources Committee

Mr. Chairman. On the outset, I would like to congratulate this committee for working in cooperation with the House Interior Committee in scheduling these hearings. It is important to emphasize that the Department of Interior is currently under court order to promulgate rules and regulations to implement the 1902 Act. With the comment period on the environmental impact statement for the previously proposed rules and regulations ending on December 31st, it is imperative that Congress act not to update the reclamation law. We can not wait until Interior is required to renew their rule making efforts before we take any positive action.

During the period between 1878 to 1902 irrigation expansion became a critical issue in the West. Attempts were made to foster development but because of inadequate water supplies, these efforts were largely unsuccessful. In 1902, Congress took a major step towards making the desert bloom when it passed the first reclamation act.

The primary purpose of this act was to encourage the settlement of family farmers in the West. It sought to achieve this by providing that water from federal reclamation projects be delivered to 160 acres per landowner with additional lands being declared excess.

This 160 acre limitation has been the source of controversy almost from the day it was enacted. Congress relied on the success of 160 acre freeholds in more humid areas when passing this provision of the 1902 act and has been reluctant to admit ever since that this limitation did not adapt well to more arid regions.

We can no longer ignore the inadequacy of the current reclamation law. The horse and mule farming upon which the 160 acre limitation was adopted has been replaced by modern machinery. This provision of the 1902 Act is out of step with current farming practices. One hundred and sixty acres is not an economic farm unit for virtually all lands within reclamation projects. It is almost essential to have larger units of farmland in order to make a living.

Because of price variability, rising production costs and other risks, larger operating units have become necessary to maintain a viable farming operation. In areas like Wyoming, the 160 acre limitation is clearly insufficient. The climate, short growing season and soil types all serve to limit production. To compensate for less productive lands larger units are required.

Similarly, reclamation reform must address the need for an equivalency for lands of lower production potential. It should be granted in all areas where climate, crop economics and geology warrant more land be eligible to receive project water.

Proponents of the strict acreage limitation argue that these limitations are necessary to promote family farming and to prevent unintended subsidies. I strongly disagree. Economic realities require larger production units.

The overriding public purpose of reclamation should be to foster productive agricultural units upon which these family farmers will be able to make a reasonable living. We can not afford to continue to drive the American farmer out of business. This is especially true in light of the increasing amount of productive lands which are being taken out of production each year in this country.

In short, we must assess reality and reassess our goals by passing legislation which will modernize this archaic law. The bill proposed is not perfect and I am certain that further adjustments will be necessary but it is an excellent beginning to address the inadequacies which have existed far too long in the current reclamation law.

STATEMENT OF SENATOR BARRY GOLDWATER
FOR THE COMMITTEE ON ENERGY, RESEARCH AND DEVELOPMENT
RECLAMATION LAW REFORM

DECEMBER 10, 1981

Mr. Chairman, I am delighted that you have introduced legislation, S. 1867, to update the Reclamation Act of 1902 and that the Committee is moving forward on the subject with these hearings.

Mr. Chairman, my state of Arizona is probably the largest reclamation state in the nation. We have seven dams on the system that provides water for the section of the state that I live in. I wish to inform my colleagues that this money has all been paid back. Only one dam was a Federal dam. The rest were built with private funds and we paid the Federal dam back long ago. In fact, we had the first dam built under the Reclamation Act back in 1902.

Mr. Chairman, I congratulate you on proposing a sensible answer to the problems of farmers under the antiquated reclamation law. I am a cosponsor of your bill.

While I personally favor a complete repeal of all acreage, leasing and residence rules under the 1902 law, I believe your legislation would, as a practical matter, allow most farming operations to be governed by farm economics. It would have the effect of freeing farmers and landowners from government control over how their private property can be used.

The exemptions in your bill would remove farm operations from the unnecessarily harsh restrictions some persons would impose on the use of reclamation water. For example, the Central Arizona Project would be exempted under section 106(g) since non-Indian agriculture will receive water only on a temporary basis and only as a substitute supply for groundwater resources currently being used.

Moreover, the Salt River Project in Arizona will be exempted under the pay-out provision of S. 1867. Section 106(a) provides that the limitations and restrictions of the Reclamation Act shall not apply to the delivery of irrigation water after the obligation of the district for the repayment of its portion of the Federal project has been discharged. I would emphasize, as a cosponsor of the bill, that I interpret the language to apply to projects which have paid out prior to the enactment of S. 1867, and not just to a district that pays out after the Act becomes law.

The general provisions of the bill would exempt most other farm operations in Arizona from restrictions, including the great majority of farms in the Wellton-Mohawk District. The bill would do this by allowing the ownership of up to 1,600 acres of land supplied by an irrigation project, with the right to lease an additional 1,600 acres. A farm operator could lease unlimited land above this base by paying full cost, with interest, for the water supplied to lands in excess of 3,200 acres. I would emphasize that the cost applies only to the irrigation portion of a project and not to costs that should be allocated to electrical power, flood control, municipal water, industrial water, or recreation purposes. Also, the cost applies only to the balance of payments due and not to the full, original construction costs.

There is one component of the definition of "full costs" that I strongly believe needs to be rewritten. Section 201(d) provides that interest shall be calculated at current interest rates payable by the Treasury upon its long-term marketable obligations. Instead, I urge that farmers be charged no more than the interest rate in effect when the project contract was signed.

Mr. Chairman, we must recognize that it is impossible to write a binding rule for every type of crop. Even if a magic figure could be found which covered all crops in different areas of the nation, today's figure would not be adequate for the future. A farm that requires 1,000 acres today might need 2,000 acres tomorrow, due to changing technology and inflationary costs of operation. This is why the unlimited leasing provision of your bill is so important and why we must amend it to make it feasible for farm operators to take advantage of the leasing right.

As a specific example of how a narrow acreage restriction would bring devastation to the agricultural community, I will discuss our biggest crop in Arizona, which is cotton. Some persons do not realize it, but Arizona is the fourth largest cotton producer in the United States.

The value of our cotton and cotton seed production was $600 million in 1980. The minimum size needed for a full-time cotton farm is 1,000 or more acres. The average size of such a farm operation in my state is over 2,700 acres.

Now, I am speaking of full-time farms operated as a business, and not part-time farms, where half the income may come from non-farming activities.

These large farms did not just happen. They grew up out of economic necessity and they will have to grow larger to stay efficient, as labor, fuel, machinery, and other production costs rise.

Mr. Chairman, I wish to make a point that has not been emphasized enough. The large farms, which are generally family operations, produce most of the food and fiber of this nation. In fact, the largest twenty percent of all farms account for nearly eighty percent of our total food supply. This is why the bill we are working on today can make or break America's food supply system.

By adding more and more restrictions on what a farmer can do with lands he owns or leases, the government would strike at the very heart of America's abundant food and fiber supply. Restrictions on private ownership and use of land promote nothing more than inefficiency. Unrealistic limitations will push the cost of farm products beyond the ability of consumers to pay for them.

And, Mr. Chairman, I am sick and tired of hearing about so-called subsidies that irrigation farmers supposedly get at the expense of the taxpayer. This is just not true.

Actually, the Federal Government will regain eighty-nine percent of its total investment through direct cash repayments from project beneficiaries. The general public more than gets back the balance in the form of increased crop production, flood control benefits, personal income taxes and recreation benefits.

I might add here, Mr. Chairman, that by the year 2000 the lands of this country will have to produce twenty percent more or we will have to have twenty percent more land in production, and I do not think the latter is possible.

So the people who argue that reclamation projects are a giveaway are wrong and they are dangerously wrong, if we are going to face the increasing prospects of having to feed additional tens of millions of people.

Mr. Chairman, your bill makes good common sense. It is pro-farmer. And it is pro-consumer. I urge all my colleagues to support it.

STATEMENT OF SENATOR MAX BAUCUS
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
REFORM OF THE RECLAMATION ACT OF 1902

December 10, 1981

Mr. Chairman, members of the Committee, I want to thank my colleague from Idaho, Mr. McClure, for holding hearings on the 1902 Reclamation Act. Reform of the 160 acre limitations is long overdue.

Expanding the 160 acre limitation is of the utmost importance to farmers who use federal water, not only in my home state of Montana, but throughout the Western states. Agriculture has come of age in the West and is the mainstay of the economy there. Family farms need more acreage today to remain economically viable and to produce an abundance of food for our growing non-farm population.

Yet, dry land farmers in the West still face an acreage limitation established in 1902. We simply must increase this limitation to reflect the present day agricultural climate.

Last session of Congress, I was a co-sponsor of Senator Church's legislation to upgrade the acreage limitation. After years of debate over the 1902 Reclamation Act, Congress must come to an agreement over improving the workability of the Act. There is no "magic number" that can apply to all areas and conditions.

I think we all agree, though, that some increase in the limitation is essential. For Montana, I support the 1280 acres called for in last Congress' legislation. Also, a workable equivalency formula must be included to deal with special problems in areas like Montana where soils are poor and growing seasons short.

Montana is fortunate to have some local experts on the Reclamation Act here today. These folks live and work with the acreage limitation and the other provisions of the Reclamation Act every day.

The Montana witnesses can tell you, though there are differences of opinion on an exact number, that Montana farmers unanimously agree on the need to increase the acreage limitation and apply an equivalency formula.

Another important aspect of this legislation for Montana is the residency requirement. I join the other Montana witnesses in support of repeal of the residency requirement.

Distances in Montana are vast. In many cases, irrigated farms produce winter feed for livestock ranches, and these farms are often more than 50 miles from ranch headquarters.

In addition, residency requirements would hamper the ability of families to pass land on to their children. The traditional family farm is still operating in Montana today. A residency requirement, however, would not allow family members the freedom to move away from the "home place" and maintain ownership.

One final provision of this bill which is essential to address is the limitation on leasing. From Montana's point of view, minimal leasing limitations make the most sense. However, I recognize the importance some people place on maintaining the intent of the Reclamation Act. I would support a compromise on the leasing limit being set at least at the limitation on ownership. This is the approach taken in S. 1867.

Leasing has become an integral part of the farm economy. In excess of 60 percent of all farm land in the United States is leased.

Young people trying to start farming today must be able to lease land. Beginning farmers do not have the capital to buy their own land -- especially with the cost of irrigated land in Montana climbing over $1,000 per acre. Return per acre is often low, and substantial acreages are necessary to make farms economically viable.

Leasing is also necessary so farmers can retire and continue to receive the income that security irrigated farms provide. Without leasing, a farmer who becomes sick or disabled would have to give up his land.

In summary, we face some very difficult issues in updating the Reclamation Act. We must walk a fine line between preventing abuses of the Reclamation Act by large corporate organizations and placing unreasonable restrictions on legitimate family farming operations.

I know that the Chairman of the Energy and Natural Resources Committee has tried to provide such a bill. Unfortunately, the discrepancies between the figures contained in S. 1867, H.R. 4265, and the Administration's recommendations pose the threat of yet another stalemate on reform of the 1902 Reclamation Act.

The expansion of the acreage limits from 160 to 1280 acres of owned and leased land is a formula which I believe the Senate will accept. And, more importantly, it guarantees that Congress will finally enact much-needed reform of the 1902 Reclamation Act.

Once again, I thank the Chairman and the Energy and Natural Resources Committee for holding hearings on S. 1867 and the reform of the 1902 Act. Enactment of this important legislation is imperative during this Congress.   Thank You.

The **Chairman**. It is interesting to note that we have action on the other side of the Capitol in the House committee and pledges for action on their part.

We intend to keep a schedule of moving forward as rapidly as possible, both today in the hearings and early in the next session, in the markup and hopefully in the completion of this legislation.

It should not come as any surprise to any one that this hearing is being held, that there is the necessity for reforming the law that was written three-quarters of a century ago, has been modified a couple of times since then but is basically the same kind of statute we started with when agriculture was done with horses and walking plows.

Agriculture has come into the modern century and it is time for the law to be modernized to permit modern agricultural practices to be applied within reclamation projects.

The issue has been debated for a long time. It is time for us now to act.

We do have a long witness list. So far we have been unable to receive permission to sit and hear witnesses while the Senate is in session beyond 2 hours after the Senate opens.

For that reason, unless we are able some time this morning to get that permission from the Senate to sit this afternoon, we will have to suspend the hearing at noon today. We hope to get that permission because a great many witnesses have come a long way in order to be heard.

I hate to inconvenience the witnesses either by having to reset hearings or to ask them to submit their testimony for the record.

It is unfortunate that we are in that position. We did not expect to be caught in that position. We had hoped we would have more cooperation with respect to hearing witnesses on this matter than we are apparently getting. I am still hopeful we will receive that permission.

Let me also place in the record at this point the statement of the ranking minority member, former chairman of the Committee Senator Henry Jackson of Washington.

[The prepared statement of Senator Jackson follows:]

STATEMENT OF SENATOR HENRY M. JACKSON

HEARINGS ON S. 1867 - RECLAMATION REFORM ACT OF 1981

I am pleased that the Committee is beginning today its consideration of Chairman McClure's bill to amend the Reclamation Act of 1902. The need for a modern statement of Congressional policy on several aspects of the Reclamation law has been generally recognized for some time. However, to date Congress has been unable to agree on the nature of that policy. Many of us here today will recall the vigorous and often emotional debate in this Committee and on the Senate floor during consideration of the bill which the Senate passed in September 1979. Unfortunately, the House of Representatives failed to act during the 96th Congress.

Now we begin again in the hope that this Congress we will be successful. My principal reason for strongly supporting early passage of reform legislation is my deep concern for the thousands of farm families on reclamation projects in my own State of Washington and throughout the West.

Right now, these farm families are under a sword of Damocles in the form of rules and regulations proposed by the Department of the Interior to carry out the Department's and the Federal courts' most recent interpretation of reclamation law. There is no doubt in my mind that, absent a clear Congressional directive to the contrary, those rules and regulations will work undue hardship on thousands of families on reclamation projects.

Statement of Senator Jackson
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While I support passage of reform legislation, I caution my colleagues that we must not go too far in freeing the reclamation program from prudent requirements for participation in the program.

In my many years in the House of Representatives and the Senate I have actively participated in the authorization of dozens of reclamation projects. In justifying those projects, we may speak of costs and benefits, repayment, increased agricultural production, and so on. But when you get to the bottom line, the justification for the continuation of the reclamation program is the creation of the opportunity for individual farmers to earn a living with Federal help. And, of course, this opportunity must be spread as broadly as possible.

If we, by legislation, in effect limit the scope of the reclamation opportunity and benefit to only a few by rationalizing large farm sizes based upon the economics of scale, then we would defeat the intent of the program, which is to benefit many. While I am aware that it will be difficult in any event to authorize new reclamation projects, if we take away the social justification for the program, it will be impossible.

Mr. Chairman, I commend you for your efforts in developing the bill before us today and for holding these hearings. I look forward to working with you to report a bill to the Senate, and to get it enacted.

The **Chairman**. Our first witness this morning is Hon. James G. Watt, Secretary of the Interior who is accompanied by Robert Broadbent, Commissioner, U.S. Bureau of Reclamation.

Mr. Secretary, welcome before our committee again.

STATEMENT OF HON. JAMES G. WATT, SECRETARY OF THE INTERIOR, ACCOMPANIED BY ROBERT BROADBENT, COMMISSIONER, BUREAU OF RECLAMATION

Secretary **Watt**. Thank you, Mr. Chairman. I appreciate the chance to testify before your committee. I do have Commissioner Broadbent with me.

Since my statement will be inserted into the record, I will abbreviate it.

Mr. Chairman, we are most delighted with your comments about the determination to move this particular subject matter through the Congress.

I want to emphasize as dramatically as I can that it would not be possible if you personally had not been willing to commit a vast number of hours during these last 10 months that we have met so frequently to discuss this subject matter. I have met with you and other Members of the Senate and Members of the House of Representatives and particularly the House Interior Committee, Republicans, Democrats, members of the administration.

I think we have made a significant contribution.

I would also like to particularly thank Senator Hayakawa who has counseled me personally on this throughout the last several months. He has made significant contributions to this subject matter.

I believe Senator Hayakawa intends to join us even though he is not a member of your particular committee.

The **Chairman**. That is correct. I await his arrival.

Secretary **Watt**. I want to highlight the statement. I want to use this as an opportunity to underline the confidence this administration has in the reclamation program.

We have a deep commitment to the need for additional water project construction and development to meet the needs of the American people for more water.

We anticipate the largest crisis to confront us in the natural resources field in the years ahead will be water shortages and at some future time we must be prepared to build needed additional water storage and delivery facilities throughout the United States, that is in the industrial East, the South as well as the West.

The Bureau of Reclamation program is one of outstanding success. It is one program we have a deep commitment to and confidence in with history and the tradition that goes with the reclaiming of the Western States that are so important and critical to America.

Mr. Chairman, I think it is symbolic of this administration's commitment to the water resources projects as to our determination to rename the Bureau of Reclamation. I think it was a sad chapter when it was downplayed and made a service rather than a reclamation agency.

In upgrading it to the traditions of the past and naming it the Bureau of Reclamation, we brought back a Presidential appointee rather than a secretarial appointee to show the commitment this administration has.

I would like to take this opportunity in this public forum to commend and compliment the Commissioner for the outstanding leadership Commissioner Broadbent has brought to the reclamation program.

Yesterday we both appeared before the House Interior Committee and many of the members complimented highly on the great leadership Bob has brought to the effort and for a Secretary to be bold enough to bring a pillpusher to run the Bureau of Reclamation, it takes some courage, but he has been an outstanding leader and probably the best Commissioner the country has ever had.

I am pleased to be associated with Commissioner Broadbent.

Mr. Chairman, it is important to underline the great successes of the Bureau of Reclamation program. This program has resulted in $7.4 billion in crops in 1980 and provides food for 39 million people. That is a remarkable success story.

It is interesting to note that water from Federal reclamation projects serves 1 percent of the total farmland in America but from this 1 percent of the agricultural land comes 10 percent of the total value of all major crops produced in the United States.

I think that is a significant fact that is often ignored by those who would seek to criticize investment in the land and water.

Another point I would like to emphasize is the U.S. Government has invested more in the Metro system for Washington, D.C., the subway system, than has been invested in all the reclamation projects in the Western States since 1902.

It gives you some idea of the priority. Here is a program that feeds millions of people and produces tremendous values for America, irrigates the lands, and meets the needs of municipal drinking water, supplies recreation opportunities, generates 45 billion kilowatt-hours, provides flood control, fish and wildlife habitat, recreation watershed capabilities, and yet we have not invested in it to the degree I think we could or should. I hope to turn that around in the next few years.

Unfortunately, right now we are servicing a debt of $1 trillion which costs us $100 billion a year to serve because of past programs of the Government that have not returned the results like this one has. Until we get the economic strength, we will not be able to commit the billions of dollars that I think are necessary for water resource projects and I hope that year will soon come and we will have an aggressive program underway.

Reclamation reform of the 1902 act is critical. Because of the counsel you have given, Mr. Chairman, and the input of others like Senator Hayakawa and the House leadership, particularly Manuel Lujan, we have been able to reach a basic agreement.

We support in concept your bill, the McClure bill that is before the committee today. We think it embodies the basic changes that are needed in reform.

We have a few suggested amendments that we think will more perfectly improve the bill. I would like to comment on that.

Senator Hayakawa, I have just been praising you for your counsel and advice you have been giving me these last 10 months on this. I had indicated to the chairman that you would be here today.

We thank you for your continued interest in this and I am grateful to you personally for the support you have given us in this effort.

Because of the interest in California agriculture which is so dominant, I understand why you got after me the very first days of this subject matter and have been on me aggressively since. I think we have worked out a position with certain modifications that I think Chairman McClure will probably make, that will be acceptable to you personally and to the California interests as well as America's interest.

Senator **Hayakawa**. Thank you, Mr. Secretary.

Secretary **Watt**. Mr. Chairman, your bill is a good bill. We fully agree with the positions you have taken with regard to the residency requirement. We do not think that is appropriate and your bill addresses that.

We think the corps exemption should be enacted as a fundamental change and that particularly affects the interest Senator Hayakawa has pushed with me in that we want to exempt those corps projects which come on the four rivers of California, the Kings, Kern, Kaweah, and Tule.

The Central Valley project of California which is a Federal reclamation project, receives part of its water supply from corps projects.

I think we will want some legislative history to establish that the corps exemption will have an impact and exempt those projects in the West that are not reclamation projects and should not be subjected to the limitations of this bill unless Congress has already provided for it.

I think the record should be clear on that point.

The one area of discussion and debate that we do still need to deal with where there is a difference between your bill and our recommendation deals with ownership and leasing.

We have recommended that ownership be limited to 960 acres of land and that there be unlimited leasing. For the water brought to the 960 acres, the fee would be on the ability of the farmer to pay which is a subsidized rate that would be available to all landowners up to the 960 acres that we are recommending.

Lands farmed by each unit in addition to the 960 could be leased if they are qualifying lands, but water delivered to those lands would be at the full cost to the Government. I think that brings us more into market forces so that the market forces would determine the proper size of the farm unit rather than statutory restrictions.

Your bill contains several exceptions and exemptions. They cover projects which have completed repayment of construction costs, charitable organizations, a fiduciary for a beneficiary whose interests do not exceed the acreage limitations, for lands using temporary water supplies, lands acquired by involuntary foreclosure, isolated tracts, and lands served with a temporary supply which may later be withdrawn for municipal and industrial purposes.

We think each of these concepts is important. We support their enactment as set forth in your bill.

I have emphasized our commitment to the 960-acre ownership and unlimited leasing concept with the full cost for water delivered to those leased lands in excess of 960.

I think the fifth issue we would focus attention on is on equivalency. We recognize the importance of class I equivalency and recommend it be used in those districts and projects where there is less than 180 frost-free days for the growing season. Other than that we would suggest the equivalency standard not be applied and what we are recommending is traditional with the Bureau of Reclamation.

I would urge you strongly to consider that.

Mr. Chairman, that is a summary of our statement.

[The prepared statement of Secretary Watt follows:]

Statement of James G. Watt, Secretary of the Interior, Before the Senate Energy and Natural Resources Committee on S. 1867

December 10, 1981

Mr. Chairman, I am pleased to have this opportunity to appear before your distinguished committee to present the views of the Administration on legislation that would accomplish a long overdue reform of the Reclamation Act of 1902. It is time that we update Reclamation law to reflect modern farming practices and today's economic conditions.

At the outset, I want to emphatically state that this Administration is proud of the Federal Reclamation program. We fully recognize the contributions of this program to the settlement of the West and to its economic development and growth. We think a program that results in the production of $7.4 billion in crops in 1980 and provides food for 39 million people is a remarkable success. This represents about 10% of the total value of all major crops produced in the United States in 1980 and it was produced on less than 12 million irrigated acres. This is only 1% of the total farmland in the country. In addition these projects have provided municipal water for over 19 million people, recreation opportunities for 67 million people, power generation of 45 billion kilowatt hours, flood control, fish and wildlife, and other benefits.

We strongly support your efforts to find a legislative solution to the many complex problems associated with the Reclamation Act of 1902, particularly the acreage limitation provisions, and we want to thank you, Mr. Chairman, for scheduling this hearing and offering the opportunity to explore solutions to the problems which have been raised relative to the 1902 Act.

The principal problem we face on reform of the reclamation law concerns the acreage limitation and the excess land provisions of the Act. The 1902 Act established a 160 acre limitation --that is, farmers could only receive project water for 160 acres. Subsequently the law was amended to permit water deliveries to excess land if the owner agreed to sell the excess to eligible owners within a specified period of time. As you know, since 1902 the economics of the traditional farm have changed dramatically. To accommodate these changes, a complex regulatory scheme has developed regarding the ownership and leasing of farm acreages and the delivery of irrigation water. This system has created numerous artificial constraints, many of which are outmoded, relative to the ownership and operation of federally irrigated farms. This has resulted in substantial uncertainties regarding the intentions of the Federal government in critical aspects of the program. This uncertainty has been counterproductive to one of the most productive segments of our economy.

Since 1976 this uncertainty hanging over farmers and landowners on Federal Reclamation projects has increased. A United States district court has directed the Department of the Interior to promulgate rules and regulations enforcing certain aspects of the 1902 Act involving recordable contracts, acreage limitations, and residency. While the rulemaking actions have been underway the project farmers and landowners have been prevented from selling their land in many cases and have been faced with a number of changes in procedures that the Bureau of Reclamation follows in administering the law.

When this Administration took office we inherited a set of proposed rules for acreage limitation and a draft environmental impact statement on those proposed rules which had been published. The comment period on those documents had begun at that time. One of my early actions as Secretary of the Interior was to suspend the comment periods on those documents in order to provide the new policy makers at the Department of the Interior adequate time to study thoroughly and review the acreage limitation issue. On July 21, 1981, the comment period was resumed and extended until December 31, 1981. During this extended comment period the Solicitor of the Department is reviewing the legal basis for several of the previous Administration's rulings on excess lands.

However, we are rapidly approaching the end of the comment period that has been established. We intend to move ahead with the rulemaking actions as required by the court and are planning to hold hearings on the proposed rules and the draft environmental impact statement early in 1982. After those hearings have been completed we will proceed with the preparation of a final environmental impact statement and final rules which will take into consideration the comments received.

I have stated many times that we would prefer to have the rules based on new legislation that reflects current farm economics. However, absent the new legislation I am obligated to proceed with rulemaking based on existing law. While the final rules that may be developed may vary from those that have been published as proposed rules, they must be based on existing law as interpreted by the Solicitor unless, of course, the law is changed.

Your bill goes a long way in solving the many problems we face. We are in agreement with most of the solutions contained in S. 1867. Most importantly, we support the concept contained in S. 1867 that there should be some limitation on ownership above which water users pay full cost. The payment of full cost for excess lands will have the effect of removing the Federal subsidy associated with these lands, while still retaining the traditional farm concept which we strongly support. At the same time this approach allows the farm operator the increased flexibility to expand his operation if he desires to do so.

We also agree with the premise in S. 1867 that those farm operators in compliance with existing law, and I want to emphasize that this is the majority according to our studies, should not be adversely affected by this legislation. These farmers should be permitted to continue their operations without the application of the full cost concept in cases where the excess acres are either held under a valid written lease for a reasonable period or are subject to sale under a recordable contract.

We support the provision of S. 1867 that would repeal the residency requirement set forth in Section 5 of the 1902 Reclamation Act. The vast majority of the land receiving Federal project water is held by persons who are presently farming or have farmed the land. We see this provision as an unnecessary and unwarranted restriction on land owners.

We also are in full support of the provisions of the bill that would exempt Corps of Engineers projects from the application of Reclamation laws. Projects which are built primarily for flood control and other non-irrigation purposes should not be subject to acreage limitation. If Congress determines that it is appropriate for reclamation law to apply to any specific Corps project it could do so in legislation authorizing the project.

S. 1867 contains various exceptions and exemptions from the acreage limitations and other provisions of the reclamation law which might otherwise prohibit the delivery of irrigation water. They cover (1) projects which have completed repayment of construction costs; (2) charitable organizations; (3) a fiduciary for a beneficiary whose interests do not exceed the acreage limitations; (4) land using temporary water supplies; (5) lands acquired by involuntary foreclosure; (6) isolated tracts; and (7) lands served with a temporary supply which may later be withdrawn for municipal and industrial purposes. We think each of these concepts is important and we support their enactment.

There are, however, several areas where we believe a slightly different approach would be in order. For each of these I would like to outline the objective we would like to accomplish with the understanding that the closer the Congress is able to come in achieving these objectives the better bill we think we will have.

The most important of these concepts relates to the Title I/Title II approach in S. 1867. As an alternative, we strongly recommend a single 960 acre westwide ownership limitation for the delivery of subsidized water. For larger landholdings (either leased or under recordable contracts), we believe the landholder should pay the full cost of water on the excess lands.

The problem we see with Title I in S. 1867 is that it allows the delivery of subsidized water for any size farm, no matter how large, if the operator only owns

160 acres. While we support the concept of unlimited leasing we believe that at some point a landholding can be too large to fit within the traditional farm concept. A landholding above 960 acres should not be granted an unlimited Federal subsidy.

An additional concern with the Title I/Title II approach is the potential unfairness to some farmers. Since the option to exercise either Title I or Title II falls on the district rather than the individual landholder, districts with a majority of farms within the 160 acre limit and desiring to stay under Title I could thwart the legitimate needs of a minority of farmers who rightfully would be entitled to expanded acreages under Title II. A single title 960 acre limitation with full cost pricing above the 960 acre limit would eliminate this problem, be more equitable to all concerned, and be easier to administer.

Finally, on the acreage limitation issue, we believe that farm operators currently in compliance with the 1902 Act should receive a limited grandfather provision allowing for continuation of subsidized water for the term of their lease not to exceed 10 years. The same approach would apply to valid recordable contracts until their expiration. We do not believe it is fair to change the rules of the game for those farmers who have been in compliance for all these years.

Let me now turn to the full cost/interest rate issues contained in your bill. Although we recognize that the interest rate contained in S. 1867 is higher than the interest rate contained in the House version of reclamation reform legislation, the Administration has consistently recommended an interest rate that more closely reflects the current cost to the Federal government of borrowing. The rate currently included in S. 1867 is too low in light of the fact that the cost of money to the government is currently based on relatively short term instruments. The interest rate in S. 1867 involves an interest subsidy which we cannot recommend for these larger farms. Therefore, we strongly urge the Congress to consider interest formulations to approximate the rate the government must pay for its money. The Administration's bills on deep draft port development and inland waterways contain interest rates similar to the one we recommend in our report which effectively achieves this result. Since the higher rate only applies to acreages in excess of 960 acres, if our proposal is accepted, the overwhelming majority of farms should be unaffected. And for the excess lands of larger farms, we believe it is fair to ask for a return to the Treasury of the amount it actually costs the government to finance the project.

On equivalency, we recognize the importance this issue has to some parts of the West, but its importance becomes less as the acreage entitlement is increased to a size that can be considered an economic farm unit. We believe that the application of equivalency to any district that requests it will create an enormous and complicated administrative burden for the Bureau of Reclamation. As a compromise, we suggest that class I equivalency be limited to those areas with a shorter growing season. The Department considers a number of factors in determining the formula to apply equivalency including crops that can be produced and the length of the growing season. Class I equivalency has not been used in projects with more than a 180 day frost-free growing season. We therefore suggest that the application of equivalency be limited to those districts where a majority of the irrigable land has a frost-free growing season of 180 days or less based on records published by the Department of Commerce.

We have several problems with the validation section of the bill. Section 108 would establish a procedure for the validation of provisions in contracts between the United States and water user entities at the request of the water user entity. The effect of section 108 could be to validate various provisions that may be in conflict with the acreage limitations and other provisions established by this bill as well as other Federal reclamation laws. Further, the section would permit the validation of a particular provision of a contract rather than the entire contract. This could complicate the already complicated administration of reclamation law. Finally, we believe that virtually all situations which this section is designed to cover relate to payout. Since payout is covered under section 106, we see no necessity for the inclusion of this section and we recommend that it be deleted from the bill.

With changes I have outlined here, we believe the Congress can solve the problems resulting from the outmoded 1902 Act. We urge your consideration of these recommendations.

In closing, Mr. Chairman and Members of the Committee, I want to reemphasize that this Administration is proud of the Federal Reclamation program. We fully recognize the contributions that this program has made to our economic development and growth and we want to see the program continued in the future. We think a program that results in the 1980 production of $7.4 billion in crops and provides food for 39 million has an outstanding record. We look forward to working with the committee in seeking solutions to the reclamation issues discussed here today. Thank you again for the opportunity to testify and I would be happy to respond to your questions.

Secretary Watt. I again want to emphasize our full commitment to reclamation of the West to feed the American people, to meet our energy needs, to meet municipal and industrial needs, flood control, recreation, fish and wildlife habitat, and the like.

It is a very successful program. I think the leadership that you and others including Senator Hayakawa have provided has led us to the point where we can get enactment of this bill quickly.

I am hopeful we can have it to the President's desk in a form that you and the House Members would agree upon by March 1.

Mr. Chairman, Commissioner Broadbent and I submit ourselves for any questions you may have on any of these matters.

The Chairman. Thank you very much, Mr. Secretary. I very much appreciate your attention to this matter. I know how much you have desired that we get ourselves in a posture to be able to work on this legislation. There is interest on this end of Pennsylvania Avenue and there has been interest down the street as well. I appreciate that interest on your part.

Senator Hayakawa, do you have a statement you would like to make at this time?

Senator Hayakawa. Yes, Mr. Chairman.

STATEMENT OF HON. S. I. HAYAKAWA, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator Hayakawa. Thank you, Mr. Chairman.

I appreciate the opportunity you are giving me to make a few remarks before this committee. I am grateful to the distinguished chairman for moving so promptly on this legislation.

We came very close, Mr. Secretary, to seeing a major rewrite of the 1902 reclamation law in the last session of Congress. Although our efforts then were not successful, I am hopeful we will arrive at a satisfactory conclusion this time around, especially with your assistance, sir.

The legislation before the committee today, S. 1867, has received full support from the full range of water users in the Western States.

It preserves the historical intent of the 1902 law, the economic development of arid western lands, but it must not be forgotten that 160 acres in 1902 was somewhat more land than could be cultivated by one man with a horse and plow.

Historical debates, which have surrounded the revision of this law, have been tainted by a small group of misguided, special-interest groups. They have for their own purposes attempted to redefine the purpose of the reclamation law in vague social terms, using such catch phrases as "family farms" and "corporate domination of agriculture."

They have ignored the overriding need to see the law reformed to meet the needs of present-day society. They have pushed to see farming patterns in the West reformed to meet their definition of what reclamation is all about and they tried to define it in 1902 terms.

The Senate has an overriding responsibility to see that the laws of our Nation are developed and administered in a manner consistent with the fundamental tenets of the U.S. economic model of free enterprise.

In enacting legislation such as this measure before us now, the Senate would be fulfilling this responsibility.

Mr. Chairman, I am proud to say I am a cosponsor of this legislation. Although the bill is likely to be revised as more information becomes available through the legislative process, I feel that in laying the groundwork for a revision of the original reclamation laws, S. 1867 represents a thoughtful and bold step toward meeting the needs of our Nation's agricultural concerns.

I am grateful to you, Mr. Chairman, and I am grateful to Secretary Watt for his testimony this morning.

The CHAIRMAN. Thank you, Senator Hayakawa, for your appearance as well as the interest you have expressed in this legislation. Of course I note you as a cosponsor of the legislation which I welcomed at the time we circulated the draft.

Mr. Secretary, I have two or three questions. For most of these areas you are already fully on the record or your position is already so well known that we will not burden the record or take the time this morning to explore them further.

You have selected 960 acres as the Department's magic figure. We have a different magic figure. I am not sure I can argue with you as to what it ought to be.

I just wondered what analysis led you to the selection of that figure?

Secretary WATT. Mr. Chairman, by calling it a magic figure you have portrayed it properly. We have tried analysis. That is not compelling. Candidly, it is a gut political number that has some justifiable reasons that I could articulate and you could shoot down and say why not 1,000 or 800 and I would have a difficult time defending it.

It is within the realm of reason. It is better than 640 and a little better than 1,600 in our opinion.

The CHAIRMAN. I would like qualification on a little better.

I think both you and I and others who have looked at this legislation are anxious that we preserve the concept that the farming unit, which we assist initially in the development of these lands for the public good and for them, shall be a unit that is based upon a family farm, whatever that concept may be. That is a rather nebulous concept.

When farming was a mule and a walking plow, 160 acres was about all a man could get over. With modern farming equipment he can go over a great deal more land than that. That is one of the miracles of the productivity of American farms, with the application of more capital for land and equipment and the more energy-intensive farming we do today with mechanized equipment.

A single family unit can indeed farm hundreds of acres, not just dozens of acres.

In my own knowledge, and you grew up in the West as did I, I grew up in the irrigated valley, a mixture of private irrigation developments that predated the Reclamation Act and reclamation projects and I spent my lifetime in that area.

Throughout southern Idaho, we have over 3 million acres of irrigated land, much of it coming from reclamation projects.

I have seen farmers grow and develop. I have seen some of them that are still family farms that farm in excess of 960 acres.

The way I approached the problem was to try to get to a level that would exclude the invitation for speculation in land or the aggregation of land and ownerships other than that of the active farmer but still give that family farmer an opportunity together with his sons, or sons-in-law, or brothers to put together a farming operation that was not just marginal that would allow him to succeed with some measure of success, to set that limit low enough to set aside the invitation for the corporate ownership or absentee ownership that both you and I are trying to avoid with respect to the limitation selected.

I cannot say 960 acres does not meet that objective except I can testify of personal knowledge of some instances when it would indeed prevent the kind of family operation that now exists.

Secretary WATT. Mr. Chairman, I would like to discuss some of the analyses we have done. We have two charts. One deals with distribution of land ownership westwide. Those are the 17 reclamation States. This is 1978 data.

We had about 126,000 individual owners of the 8.8 million acres of land with Federal developed water; 99.6 percent of the ownership was in farm units less than 960 acres.

If you go to 1,280 acres, it is 99.7; 91 percent of the farm ownership is 160 acres or less.

The CHAIRMAN. Mr. Secretary, I am familiar with those charts. They are about as inaccurate as anything could be. I think we would confess that over the last 75 years and in the last several years in particular, a lot of people have been able to adjust the ownership patterns to the law rather than to the realities of their farming operations.

Secretary WATT. The other chart we have deals with distribution of farm operations and acreage by size of farms.

That is why I confessed early on that rather than try to sit here and defend a number or a hard number, there is no such thing as a hard number.

They are political judgments that really in the end, you and the other Members of Congress must vote on and accept and it will be right.

The CHAIRMAN. I do not know what the acreage level is at which we begin to induce large corporate absentee ownerships. The pattern in Idaho has been there is not much of that below 5,000 acres. You simply do not get that kind of pattern of ownership developed.

I think there is a substantial margin of safety at some point below 5,000 acres. That is what I am groping for.

I think the people who perhaps did not grow up in the West as you and I have need to understand that the statistical analysis of farm ownership is very difficult to make based upon the official records of the irrigation districts because there have been a variety of ways in which people have adapted to the restrictions of the current law to give at least the appearance of appliance with the existing statute.

When you build on a building block of 160 acres, you find as many members of the family as necessary to divide the ownership among in order to comply.

Secretary **Watt**. We have seen more willingness to show understanding this year. Too frequently the view of someone from a particular project is not very tolerant to those of us who grow high-altitude crops and maybe vice versa.

I think embodied in the basic concepts of your bill are the provisions that can allow all of us to live under a decent, modern reclamation law. I think that is why the mood has changed.

I think in the process we have gone through in recent years in trying to focus attention on this that we have helped one another to realize that the differences in growing crops in my high-altitude State of Wyoming and yours of Idaho vary significantly in altitude and latitude from the California Central Valley project.

I think we need to have the flexibility in acreage and leasing capability to allow each of those situations to be pursued as the marketplace would dictate with some limitation on ownership.

Being an advocate, I think our compromise on that with limiting ownership to 960 acres and unlimited leasing marries the two concepts of market forces plus the concepts that were the genesis of the 1902 act to encourage family-farm units to come together and bring a reasonable solution.

I cannot sit before you and say that will be this acreage or that acreage. There is not such a number.

Mr. **Chairman**. Thank you very much, Mr. Secretary.

Senator Domenici?

Senator **Domenici**. Mr. Chairman, I have a scheduling problem. Could I discuss it with you a moment?

The **Chairman**. Of course.

Senator **Domenici**. Would you modify your statement where you said Idaho and Wyoming and add New Mexico, for the little bit of agriculture we have.

Secretary **Watt**. I certainly would.

Senator **Domenici**. Mr. Chairman, I have to leave for about 30 minutes. How long do you plan to have the Secretary here?

The **Chairman**. I hope we will move to the other panels. We do not have permission to sit this afternoon. As a result we are going to move as rapidly as we can.

Senator **Domenici**. Would it be possible if I returned by 10:15 for me to ask the Secretary a couple of questions?

The **Chairman**. Mr. Secretary, can you remain that long?

Secretary **Watt**. You can begin with another witness and call me back if you would like. This is a high priority for us and I will give whatever commitment is needed.

Senator **Domenici**. Thank you. Thank you, Mr. Chairman.

The **Chairman**. Mr. Secretary, you have suggested there is some concern with the validation provisions of this bill. Validation is most generally in the context of some payout provision. If there is a general payout provision in the statute as ultimately passed, the need for validation would be greatly reduced.

If a payout provision is not contained in the final provision of the statute as passed, would you then object to a validation provision?

Secretary **Watt**. We think we can handle most of the problems that would come up regarding payout administratively. We think it might be to everyone's advantage to put into the legislative history those projects which have been paid out to date and get that established from the beginning.

We feel validation can better be handled administratively and if necessary through the court rather than giving blank validation through the statutory program.

We think it is better management to handle it administratively. Would you like to add to that?

Mr. BROADBENT. I would only say if the payout provision did come out of the act which is what you talked about, I would think in order to clarify that, there may have to be something on validation in there, otherwise there would not be any provision for payout.

Secretary WATT. We need to provide for payout.

The CHAIRMAN. That was the context in which I asked the question. If for some reason that provision fell out of the bill before it is finally passed, there would be a need for something to deal with the question of validation.

Secretary WATT. Yes.

The CHAIRMAN. Thank you, Mr. Secretary, and thank you for your willingness to accommodate Senator Domenici.

[Subsequent to the hearings the Department of the Interior responded to aditional questions submitted by Senator Hayakawa as follows:]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

January 22, 1982

Honorable S. I. Hayakawa
United States Senate
Washington, D.C. 20510

Dear Senator Hayakawa:

This is in response to several questions which were submitted to the Department of the Interior for response after Secretary Watt's appearance at the Senate Energy and Natural Resources hearing on S. 1867. The questions are restated and the Department's response follows.

1. If full cost is charged on Reclamation project waters - what interest rate do you recommend?

   The Administration supports the following language for the definition of full cost:

   > "The term 'full cost' means all construction costs of facilities in service which are properly allocable to irrigation, plus all operation and maintenance deficits funded, less credit for payments, with interest on both accruing from the date of enactment of this Act on costs outstanding at that date, or, in the case of new contracts, from the dates the costs are incurred, plus current operation and maintenance costs. The interest rate used pursuant to this Act shall be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with approximately 5 years remaining to maturity during the month preceding the date of enactment of this Act on costs outstanding as of that date, or, in the case of new contracts, during the month preceding the fiscal year in which the costs are incurred. The interest rate so determined on the unrecovered balance shall be redetermined every 5 years to reflect the average market yield at that time on outstanding marketable obligations with approximately 5 years remaining to maturity."

   Under the Administration's formula the interest rate for the most recent period is 13¾ %. The rate would, of course, vary.

2. I understand the Administration does not want to limit or cap the size of farming operations - Is this correct?

   The Administration does not support a limit on the size of farming operations.

How do you respond to farmers in California who suggest that an interest rate in the "mid-teens" on "full cost" water would effectively serve as a limit on the size of farming operation that is economical?

While we do not support a limit on the size of farming operations, we support a limit on the size of the subsidy that is available to farmers from reclamation projects. There are many factors that contribute to the achievement of the most profitable and economical farming operation. The price of water is only one of them.

Again on the "full cost" provision, should the interest rate that is charged be the rate of interest existing at the time at which the facility was put into service?

No, we believe that that interest rate would be too low. We recommend that the interest rate reflect the current cost to the government of borrowing. We also recommend that the interest rate be re-evaluated periodically. Our recommendation reflects the fact that the U.S. Government finances its debt on relatively short-term instruments and is constantly refinancing the debt.

If we can be of further assistance please do not hesitate to contact us. Thank you for your interest in reclamation reform legislation.

Sincerely,

Theodore J. Garrish
Legislative Counsel

The **Chairman.** Panel No. 1 is Wayne Cunningham, agricultural program analyst for Dr. William P. Stephens, secretary of agriculture, State of New Mexico on behalf of the Honorable Bruce King, Governor of New Mexico and George Proctor on behalf of the Honorable Victor Atiyeh, Governor of Oregon and of Klamath Basin Water Users Association.

I might note that Senator Hatfield had intended to be here to particularly welcome Mr. Proctor before the committee and was unavoidably and necessarily detained at another appointment at this time.

I will extend that welcome on his behalf. I know he would wish me to do so.

Mr. Cunningham, you may proceed.

STATEMENT OF WAYNE P. CUNNINGHAM, AGRICULTURAL PROGRAM ANALYST FOR DR. WILLIAM P. STEPHENS, SECRETARY OF AGRICULTURE, STATE OF NEW MEXICO ON BEHALF OF HON. BRUCE KING, GOVERNOR OF NEW MEXICO

Mr. **Cunningham.** Thank you, Mr. Chairman.

For the record, my name is Wayne P. Cunningham. I am representing Dr. Bill Stephens, secretary of agriculture and also Governor Bruce King.

Governor King has directed me to testify on his behalf. In addition we consulted with various organizations, irrigation districts, and others in reviewing this legislation.

Governor King has asked me to express his appreciation to you in the name of the people of New Mexico for this opportunity to be heard and to express support of the principles contained in S. 1867.

We believe that S. 1867 upholds the basic national philosophy of the family-owned farm while recognizing the economic and logistical realities of today's farming.

It is in that light that New Mexico proposes some modifications to the bill as presently written in order to make it more responsive and easier to administer.

Mr. Chairman, we think a basic observation is in order.

The Congress has been working toward producing legislation which will encourage the preservation of the traditional family farm.

In proposing to enforce the 160-acre limitation, the Department of Interior has indicated its goal is to encourage, preserve, and promulgate the family farm concept as was set forth in the original legislation for the Reclamation Act of 1902.

Even through enforcement of the present law to break up huge corporate farming operations, it would destroy far more well-established and productive family farming operations located in New Mexico and elsewhere. This seems to be working at cross purposes.

The 160-acre limit, a figure whose origin may be found in post-Revolutionary War days, is chronologically out of place and no longer reflects the economic realities of modern farming.

The limitation needs to be revised to allow these farms to expand in acreage in order to insure that they will continue to be economically viable.

Enforcement of the 160 acre limitation or anything close to that would create economic disaster in New Mexico's farming community and in my opinion accelerate urbanization of existing farmland.

American agriculture is a strategic industry and one of the few bright spots in the gloomy picture of our balance of payments.

The ideal situation would be to have no limitations on acreage and let the marketplace operate as it has in the past. The reality is that the Reclamation Act of 1902 exists and if enforced in its present form, it will have a negative economic impact on thousands of family owned and operated farms.

S. 1867 with amendments is a reasonable compromise and New Mexico supports it.

Thank you, Mr. Chairman.

[The prepared statement of Dr. Stephens follows:]

STATE OF NEW MEXICO

Department of Agriculture
GOVERNOR'S CABINET

BRUCE KING
Governor

Box 3189, NMSU Campus
Las Cruces, New Mexico 88003
Phone: (505) 646-3007

WILLIAM P. STEPHENS
Secretary

TESTIMONY ON S. 1867
TO ENERGY AND NATURAL RESOURCES COMMITTEE

WASHINGTON, D.C., DECEMBER 10, 1981

BY

DR. WILLIAM P. STEPHENS
SECRETARY OF AGRICULTURE
NEW MEXICO

ON BEHALF OF
THE HONORABLE BRUCE KING, GOVERNOR
STATE OF NEW MEXICO

Mr. Chairman, I am Dr. William P. "Bill" Stephens, Secretary of Agriculture and Director, New Mexico Department of Agriculture. Governor Bruce King has directed me to testify in his behalf.

With me, from my staff, is Mr. Wayne Cunningham of Las Cruces. In addition, we consulted with various organizations, irrigation districts, and others in reviewing this legislation.

Governor King has asked me to express his appreciation to you in the name of the people of New Mexico for this opportunity to be heard and to express support for the principles contained in S. 1867.

We believe that S. 1867 upholds the basic national philosophy of the family-owned farm while recognizing the economic and logistical realities of today's farming.

It is in that light that New Mexico proposes some modifications to the bill as presently written in order to make it more responsive and easier to administer.

(1) We agree with you in Section 101 of the bill that residency should not be a part of reclamation law.

(2) We would favor the increased acreage under the McClure bill and feel that the minimum entitlement should not be less than the 960 acres as prescribed in the Lujan bill. Ownership should be increased in excess of the basic entitlement when required to equalize climate, soil conditions, availability, and quality of water with Class 1 land.

(3) In Section 106 (a) on page 7, line 7, after the word "the" insert "initial."

(4) In Section 108 (c) on page 10, line 16, insert the following "Written Secretarial exemptions based upon a certification of payment in full

of the construction costs and determination that a general pattern of family ownership has been established which were in effect or made prior to the effective date of this Act by the Secretary of the Interior or his authorized agents on behalf of the United States, with or for the benefit of a contracting entity, may be validated at the request of any non-federal party to whom such Secretarial exemption was made within three years after the enactment of the Act";
On Page 10, line 21, after the word "provision" insert "or";
On Page 10, line 22, after the word "representation" insert "or Secretarial exemption".

(5) In Section 109 the United States should consent to be sued so that contracting entities would be entitled to receive project water as a remedy and not just money damages.

Mr. Chairman, we think a basic observation is in order. The Congress has been working toward producing legislation which will encourage the preservation of the traditional family farm. In proposing to enforce the 160-acre limitation, the Department of Interior has indicated that its goal is to encourage, preserve, and promulgate the family farm concept, as was set forth in the original legislation for the Reclamation Act of 1902. Even though enforcement of the present law would break up some huge corporate farming operations, it would destroy far more, well-established, and productive family farming operations located in New Mexico and elsewhere. This seems to be working at cross purposes.

Further, the 160-acre limit, a figure whose origin may be found in post-revolutionary war days, is chronologically out of place and no longer reflects the economic realities of modern farming. The limitation needs to be revised to allow these farms to expand in acreage in order to ensure that they will continue to be economically viable. In fact, enforcement of the 160-acre limitation, or anything close to that, will create economic disaster in New Mexico's farming community and in my opinion, accelerate urbanization of existing farmland.

American agriculture is a strategic industry and one of the few bright spots in the gloomy picture of our balance of payments. The ideal situation would be to have no limitations on acreage and let the market place operate as it has in the past. But the reality is that the Reclamation Act of 1902 exists and if enforced in its present form will have a negative economic impact on thousands of family owned and operated farms. S. 1867, with amendments, is a reasonable compromise and New Mexico supports it.

Please refer to written (detailed) statement for inclusion in the record of the meeting of the Energy Research and Development Subcommittee, March 22, 1979, Washington, D.C., by Dr. William P. Stephens, Secretary of Agriculture, State of New Mexico, pages 575-686.

Thank you Mr. Chairman.

The **Chairman**. Thank you, Mr. Cunningham.

Mr. Proctor.

STATEMENT OF GEORGE H. PROCTOR OF PROCTOR, PUCKETT, & FAIRCLO ON BEHALF OF HON. VICTOR ATIYEH, GOVERNOR OF OREGON AND THE KLAMATH BASIN WATER USERS ASSOCIATION

Mr. **Proctor**. Thank you, Mr. Chairman.

Let me take this opportunity to thank you particularly for scheduling hearings in conjunction with hearings held in the House on this very subject. It certainly has been a convenience for us.

I would like to comment on a couple of paragraphs of Governor Atiyeh's statement, particularly he is concerned about what your bill does provide for, a meaningful equivalency provision.

I would like to read the second paragraph on page two of his statement.

> I further urge the adoption of provisions to validate previous agreements between individual farmers and the Secretary of Interior or his delegated agency. Many Oregon farmers have entered into irrigation contracts and agreements with the Bureau of Reclamation that they understood would assure them a permanent exemption from acreage limitations.
>
> Others have leased additional farmland above the current limitation because the limitation had not been applied to leased lands. In each of these instances, the farmers are operating in line with court decisions and the Bureau's past administrative rules. These rules have been accepted in good faith by our Oregon citizens.
>
> Any amendments to the Reclamation Act involving acreage limitations should also include relief from acreage limitations upon fulfillment of construction repayment obligations and provisions addressing ownerships that commingle project and nonproject water supplies.

I would also like to introduce for the record the statement of Malcolm Crawford who was to be on the following panel. He will not be present.

The **Chairman**. Thank you very much. His statement will be made a part of the record.

Mr. **Proctor**. I would offer my statement for the record and would like to make a comment on a particular issue that to us in the State of Oregon is important, and that is in regard to the question of validation of contracts.

Mr. Chairman, it is with disappointment that I hear that the Secretary of Interior requested in a prepared statement the deletion of the provision for validation of contracts which you have provided in your bill, and I must report to my Governor and the water users that the Secretary does not support the sanctity of contracts.

I would hope after due reflection that he would realize the importance of this issue to the West and to the water users so we can be assured that the Government will live up to its contracts.

As I have previously testified, let me give you an example of the situation in our area. We have contracts that were entered into. One was entered into in 1917 prior to the 1926 act, one in 1932 prior to the 1939 act neither of which were required to be submitted to Congress; a contract entered into in 1952 was approved by Congress. All have basically the same language. All have been validated by State court proceedings which were required by the United States at the time of entering into them. All were receiving water from the same sources.

To find out within the last 4 years that the first two contracts, of 1917 and 1932, would not be lived up to by the United States raises a very serious question as to the legal relationship between the United States and the water users.

Only the provision you have in your bill, that allows those contracts to be validated in a rather normal legislative process, can assure the validation of these contracts that have been placed in question.

The provisions in your bill will provide adequate safeguards for these concerns, to be sure this process can be completed and the United States can be expected to live up to its portion of the agreements.

The water users of our area say we will take the bad with the good but we expect the United States to do the same.

I feel the validation provision that you have is proper and very necessary. Thank you.

The CHAIRMAN. Thank you, Mr. Proctor. We will insert the statements into the record at this time.

[The prepared statements of Governor Atiyeh, Mr. Proctor, and Mr. Crawford follow:]

STATEMENT OF VICTOR ATIYEH

GOVERNOR OF OREGON

TO THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Oregon, like other western states, is deeply concerned with the prompt and equitable resolution of the controversy over acreage limitations that has been under discussion for the last four years. Our concerns are based on both social and economic consideration.

The Reclamation Act has benefited agricultural development in many areas of our state. Water supplied by reclamation projects is still an economic cornerstone in many of our communities.

In recent years, Oregon has enacted far-reaching legislation for the development of land use plans to accommodate anticipated future growth. These plans are now being implemented. A major emphasis of this effort is the preservation and maintenance of agricultural lands in agricultural production. Without prompt and resonable action on the part of the Congress, we could face limitations that may severely handicap our farm industry, adversely affecting our economy and our social objectives.

It is essential that any acreage limitation on federal irrigation projects recognize the range of site and crop characteristics that make up our agricultural industry and reflect present day agricultural economies. The acreage necessary to economically produce a particular crop at a particular location cannot be applied to the production of all crops at all locations. Thus, any limitation should be flexible enough to accomodate the widest range of economical crops and farming locations.

I further urge the adoption of provisions to validate previous agreements between individual farmers and the Secretary of Interior or his delegated agency. Many Oregon farmers have entered into irrigation contracts and agreements with the Bureau of Reclamation that they understood would assure them a permanent exemption from acreage limitations. Others have leased additional farmland above the current limitation because the limitation had not been applied to leased lands. In each of these instances, the farmers are operating in line with court decisions and the Bureau's past administrative rules. These rules have been accepted in good faith by our Oregon citizens.

Any amendment to the Reclamation Act involving acreage limitations should also include relief from acreage restrictions upon fulfillment of construction repayment obligations, and provisions addressing ownerships that co-mingle project and non-project water supplies.

I urge the members of Congress to take action promptly and continue to encourage agricultural production so essential to the State of Oregon and the nation.

STATEMENT OF
GEORGE H. PROCTOR
KLAMATH BASIN WATER USERS PROTECTIVE ASSOCIATION

Before the Senate Committee on Energy and Natural Resources
Washington D.C.
December 10, 11, 1981

Mr. Chairman and Members of the Committee:

Klamath Basin Water Users Protective Association which comprises water districts and water users in the Klamath Basin of Oregon and California represents a combined area of approximately 184,000 acres at an elevation over 4,000 feet with a growing season from 90 to 120 days. This area includes land within the Klamath Project of the United States Bureau of Reclamation. I have testified before the Committee concerning modernization of the Reclamation Act of 1902 and would ask the Committee to take note by reference of such testimony which is as pertinent today as it was at previous hearings. *

This Congress has an opportunity to allow the United States Bureau of Reclamation to re-establish its credibility, to live up to its contracts and written representations which parties have relied and acted upon and to remove the advocacy roll which has developed in recent years between the Bureau of Reclamation and the water users because of this issue. The advocacy needs to be changed to cooperation so that the United States in cooperation with the states and water users move ahead to conserve, protect and develop our vital water resources.

Congress in recognizing under the reclamation law that water rights are to be administered by the states, that the Bureau of Reclamation once becoming involved in water projects should turn over the facilities to the water users and withdraw as soon as practical should not over-burden the 95% to 98% of the conscientious water users with the federal presence.

We believe that S-1867 will basically achieve these goals and urge prompt consideration and passage of this legislation.

* April 12-13, 1978
March 22, 1979

STATEMENT SUMMARIES

1.. The issue recently raised concerning the acreage limitation as it affects the State of Oregon, is not agri-business corporations versus small farmers, since only 3.6% of farming is corporate farming and of which 87.3% of corporate farming is family farming, but whether a water user who has acted in good faith in reliance upon the written contracts and representations of the United States has a right to expect the United States to keep its written word. We think they do.

2. The solution to this problem should have first priority either separately or as a part of a comprehensive legislative revision of the acre limitation question.

3. In the Klamath Project, Oregon-California, authorized in 1905, all construction repayment costs have been allocated to irrigation use only and have been paid by the water users. None of these costs have been allocated to, or paid by fish and wildlife, recreation, flood control, commercial power, and municipal and industrial water users, which have received and are receiving substantial benefits, in other words, the subsidy is FROM irrigation and not TO irrigation.

4. The Secretary of Interior's attempted repudiation of 72 years of legislative and administrative history of the Klamath Project casts a serious cloud upon the legal relationship between the United States and the water users which is being left to Congress or the expensive route of the courts to resolve. For example:

(a) Identical contract provisions for release of acreage limitation upon pay-out are now being construed differently by the Secretary depending on whether Congress formally approved the contract;

(b) Administrative release of acreage limitations issued by the Commissioner of the United States Bureau of Reclamation after repayment of allocated construction costs would be repudiated by the Secretary after nearly thirty years of reliance by all parties;

(c) In addition there are approximately 180 to 190 contracts in the Klamath Project service area with contract provisions and/or written representations made that upon pay-out the acreage limitation would not apply.

5. **The Bill** addresses this problem of validation, effect of pay-out based upon written representations, and acknowledgment as it affects contracting parties in the Reclamation states and provides congressional direction in sustaining the validity of the written word of the United States. This concept is in conformance with the provisions of the Reclamation Act and treats all such parties fairly and equally as contrasted with specifically listing all such parties with the obvious chances for omissions and mistakes.

6. The second area of priority to the State of Oregon in a comprehensive revision is the incorporation of a viable equivalency concept so that additional acreage necessary for a economic unit will be allowed. In the State we have a wide variation in the soil characteristics, cropping patterns, elevation, climate and growing season so that flexibility is necessary to take into account the widest range of economic crops and farming locations.

7. We urge prompt action by the Sub-Committee and Congress to avoid the distinct possibility that the very individuals singled out for benefits from the law of 1902 -- the family farmers -- will not now be adversely impacted in the State of Oregon.

George H. Proctor
Klamath Falls, Oregon

STATEMENT OF
MALCOLM CRAWFORD, PRESIDENT
OREGON WATER RESOURCES CONGRESS

Before the Senate Committee on Energy and Natural Resources
Washington D.C.
December 10, 11, 1981

Mr. Chairman and Members of the Committee:

The Oregon Water Resources Congress is composed of water users within the state of Oregon and has been actively involved in advocating the Modernization of the Reclamation Act of 1902 for a good many years.

The Oregon Water Resources Congress adopted the following statement on November 20, 1981 at its annual convention:

> "Because the Oregon Water Resources Congress recognizes the deficiencies in United States laws pertaining to the 160 acre limitation, residency requirements and leasing restrictions of lands provided with irrigation water through the United States Reclamation projects.
>
> Therefore, the Oregon Water Resources Congress respectfully requests and urges the United States Congress to amend such laws so that the requirements are compatible with current agricultural and economic conditions."

We believe that S-1864 now before the Committee would basically achieve these goals.

The **Chairman**. We hope to avoid the necessity for litigation between people who feel the Government ought to be bound by contracts who have to go to court to protect that right or assert that right.

At the same time I think we do not wish to produce some unintended results by an overbroad application of a general concept, whatever somebody may urge at some time as some kind of oral representation or a contract by sufferance in a pattern of use would be best validated.

We are going to try to find a way to accommodate your concern.

Mr. **Proctor**. As noted in your bill, you have two provisions. One is for validation of contracts and one that relates to representations.

It would seem to me that both of those need to be addressed.

The **Chairman**. Thank you very much, Mr. Cunningham and Mr. Proctor.

The next panel is Sherl Chapman, executive director for Idaho Water Users Association; Mark Moorman, president of Idaho Irrigation Pumpers Association and Alice Parker of Royal City, Wash. Malcolm Crawford will not be here and his statement has already been made a part of the record.

It is a pleasure for me to have people from my own State here, people who have been friends for many years who are appearing today representing the interests they and I both share.

Sherl, you may begin.

STATEMENT OF SHERL L. CHAPMAN, EXECUTIVE DIRECTOR, IDAHO WATER USERS ASSOCIATION, INC.

Mr. **Chapman**. Mr. Chairman and members of the committee, it is a pleasure for me to be here. As you will remember, Senator McClure, we had anticipated having you in Twin Falls today.

The **Chairman**. I remember.

Mr. **Chapman**. Obviously this is much more important to all of us.

For the record, my name is Sherl Chapman. I represent the Idaho Water Users Association, which is a voluntary association of irrigation districts, canal companies, and individuals throughout Idaho.

At the present time we represent some 154 irrigation districts and canal companies which incorporate about 2¾ million acres of land in Idaho, about 1½ million of which are reclamation lands.

I would like to congratulate you on the introduction of the bill and I think it will solve most of Idaho's problems. I would like to address a couple of areas in the bill that I feel might be advantageous to modify somewhat.

With regard to the payout provision, we would suggest that some mechanism be incorporated into the bill to allow for individual payout.

In some cases the irrigation districts may not want to go ahead and accelerate their payout or pay out in a lump sum on a districtwide basis. There are many areas where individual farmers may wish to do so. We think they should be allowed to do that.

I think the greatest concern we have in the bill is with the options you have provided, the options you have given reclamation farmers under title I and title II of the act which are extremely important. I think they will be of great value.

We do have some concern with the mechanism by which you get to those options. For example, if an individual has 400 acres within a reclamation project, if he stays within title I, he will have to sell part of his land and lease it back.

If he opts to go for title II, then he would have to ask the district to amend the contract.

As you may remember under Idaho irrigation district law, if the obligation of a district is expanded, the district often has to hold a districtwide election to see whether or not that obligation can be incurred.

I have tried to get some estimates of cost to amend a contract. It appears a district could incur as much as $20,000 in legal fees and election fees in order to go through the process of amending a contract.

We feel perhaps there could be an administrative design by which option A or option B could be accomplished rather than going through the formal amending process to get from title I to title II of your act and we would suggest that be explored as best as possible.

The CHAIRMAN. You are referring to the acreage provisions and limitations of existing contracts and the way in which this would vary from that?

Mr. CHAPMAN. Yes.

The CHAIRMAN. Does that not also apply perhaps to such things as residency requirements?

Mr. CHAPMAN. Yes. I think the way the bill is written in abolishing residency requirements works very well.

The CHAIRMAN. Even though that is a matter of contract requirement?

Mr. CHAPMAN. Yes, I think so.

The CHAIRMAN. Why do you think one requires a district election and the other does not?

Mr. CHAPMAN. I am not sure. I am not an attorney. Some of our irrigation district attorneys have indicated they felt the one would require an election.

The CHAIRMAN. I appreciate the point.

Mr. CHAPMAN. The other item I would like to discuss is the acreage limitation. We certainly appreciate your effort to increase the acreage limitation.

As you have indicated many times before and we have indicated in testimony before various committees, for so many years reclamation farmers have been bumping their heads against some sort of arbitrary limit that has forced them to either continue with marginal operations in many cases or try to circumvent the reclamation law.

It is very encouraging to see that finally there is an acreage limitation that will allow for the initiative and the dedication of the farmer and allow him to expand and to take advantage of the initiatives that many of these people have.

We feel the acreage limits that you have in your bill both in title I and title II are very appropriate. We appreciate that effort.

We think the law as written now is a suppression of initiative. We would hardly concur with your acreage limits.

Thank you.

[The prepared statement of Mr. Chapman follows:]

Representing Over 2,700,000 Acres of Irrigated Land

Idaho Water Users Association, Inc.

AFFILIATED WITH NATIONAL WATER RESOURCES ASSOCIATION
921 S. ORCHARD SUITE N BOISE, IDAHO 83705
TELEPHONE 344-6690

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BILL TAYLOR
Twin Falls - District 18

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ADVISORS
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Associate Member

TESTIMONY OF SHERL L. CHAPMAN, EXECUTIVE DIRECTOR

IDAHO WATER USERS ASSOCIATION

ON MODIFICATION OF THE 1902 RECLAMATION ACT

BEFORE THE

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

SENATOR JAMES MCCLURE, CHAIRMAN

December 10, 1981

Mr. Chairman:

My name is Sherl Chapman and I am the Executive Director of the Idaho Water Users Association. Our Association is comprised of water users in Idaho owning or operating approximately 2.75 million acres of irrigated land. Approximately 1,500,000 of these acres receive water under contract with the United States Bureau of Reclamation.

The 1902 Reclamation Act has long been of concern to our members in Idaho. The problems of acreage limitation, residency, comingled water and equivalency have haunted our farmers for years. Now it appears we are very close to resolution of these problems through introduction of your legislation. We commend you and your co-sponsors on introduction of this legislation and would offer our comments on some specific areas of concern.

1. Residency. The Idaho Water Users Association commends the sponsor for the language in S-1867 concerning residency. In our state, we feel that our problems encompassing surviving spouses and others are dealt with and solved by this approach.

2. Equivalency. We support your concept and technique of establishing equivalency. It will be helpful in the equalization of crop land potential in Idaho. It is my understanding that even though a request must be made to the Secretary of Interior, equivalency will be allowed for qualifying projects upon development of the appropriate data for an equivalency determination.

3. Validation. Because many of us are here today to correct what the courts and others have done to existing contracts between the United States and contracting entities, we would request a clear, positive and affirmative validation of all existing commitments previously made by the government in contract or otherwise. This must include recognition of prepayment provisions when they are included in existing contracts and written representations of the Federal Government.

4. Corps of Engineers Projects. In most cases in Idaho where a Corps of Engineers reservoir is involved, specific contracts have been entered for the distribution of the irrigation water by the U. S. Bureau of Reclamation. In those cases where space has been purchased, the contracts clearly set out the relationship between the United States and the contracting entities. There are no hardship cases insofar as Corps rerervoirs are concerned in Idaho for that reason. However, as a conceptual matter, it appears only fair that those who were pumping from a river and a Corps of Engineers

project was thereafter superimposed on them, should not be caught up in the application of the acreage restriction. We think the law would refer to such persons as "incidental beneficiaries" in spite of conjecture that the courts would hold otherwise.

5. Public Corporations. We feel that ownership of project land by public corporations should be significantly restricted. S-1867 accomplishes this goal in Section 201(b) and has our concurrence and support.

6. Consent to Sue. The United States should be a party to confirmation or validation actions concerning water contracts in State Court proceedings so that the contracts are mutually binding.

7. Comingling. The application of the land limitation on those who use a diminutive amount of water from a Federal project appears harsh. In cases where 75% is other than water from a Federal reservoir, the project should be exempt. While validation of existing contracts may cure this problem to some extent, it may be that a separate exemption deserves consideration so that comingling is dealt with in the basic law. S-1867 does not seem to broach this subject. It is recommended that specific language be included on this subject to eliminate ambiguous interpretation of the law as it relates to comingling at a later date.

8. Pay Out. Section 106 relates to repayment of the construction costs of project facilities and the elimination of the limitations and restrictions imposed after such pay out is completed. The concept of removing the "Federal shadow" from a district once pay out is completed is excellent. However, there are many irrigation districts in Idaho that probably will not take advantage of pay out for one reason or

another. Within these districts, however, there may be individuals who would like to repay their obligation to the Federal Government on an accelerated or lump sum basis. Under the provisions of S-1867 there does not appear to be a mechanism that would allow individual pay out. It is our recommendation that language be included in the Act that would provide that an individual be allowed to prepay ahead of an established contract and relieve his lands of the acreage limitation.

9. Optional Expanded Ownership. Title II of S-1867 provides that any contract existing between the Secretary and any party pursuant to Federal reclamation laws may be amended to conform with the provisions of this Title and allow for expansion of ownership to 1,600 acres and an additional lease holding for a total amount of 3,200 acres of Class I lands or their equivalent. It further provides that irrigation water may be delivered to lands in excess of the 3,200 acres if the full cost of water is paid for such water assignable to lands leased in excess of 1,600 acres. This optional ownership is in lieu of Title I which provides that an individual may own 160 acres of land and obtain unlimited leasing. Our Association has some concern with this approach. Under Title I, an individual owning 400 acres would be forced to sell a portion of his land and lease it back in order to comply with the provisions of Title I. This seems to put the land owner in a very tenuous position and may create some hardship on farmstead owners. If the individual elects to use Title II of the Act, he must then go to the district and request that they amend the Federal contract. This procedure has several drawbacks. Most districts are required to hold a district wide election if their financial obligation of the

district is increased. Since amending a Federal contract will require a great deal of expense and time, it is entirely probable that a district wide election would have to be held before the district could even attempt to amend a contract. Once the contract language has been reached, an additional election would have to be held in order to ratify the contract in behalf of the district. Additionally, many districts are in the position where only a few land holders are in excess at the present time. It is entirely unlikely that the district would want to incur the expense and bother of attempting to amend the contract for only a few land holders. If this were the case, then modifying the reclamation law would not assist the land owners but merely pit land owner against district.

Our Association would recommend that rather than requiring a district to amend its contract in order to qualify for Title II, that language be included within the bill that would allow the land owner to select option A or option B in substitute for Title I or Title II. By providing this as an administrative option, paper work is minimized, the administrative morass is sidestepped, and a district would not be pushed into a complex expensive effort to amend a contract for only a portion of its land holders. It would seem that such language could be developed and would provide for simplification of the ownership-lease holding problem. By selection of option A or option B, the land owner is then committed to a particular course of action and the other provisions of either section would apply.

10. Acreage Limitation. We congratulate the Senator and his co-sponsors of this legislation for expanding the acreage limit under S-1867. For many years the philosophy has been within reclamation

projects that a farmer should be restricted to just barely enough acreage to make a living. No effort has been mounted to recognize initiative, efficiency, and foresight. The farmer in reclamation projects has been forced to teeter on the brink of disaster or to seek means by which the intent of reclamation law could be circumvented. By expanding the acreage limitation, you have removed this impediment to efficiency and initiative and have recognized that the farmer is an individualist who is committed to the free enterprise system. Unless we allow the farmer to progress and continue to produce food as he does so efficiently, our nation will soon suffer from a decline in productivity and apathy will develop among our farm public. Without their continued dedication, the support of Congress, and the administration, each one of us in every walk of life will be effected.

I thank you for the opportunity to testify here today and urge you to move as rapidly as possible in the passage of legislation to modify the 1902 Reclamation Act.

The CHAIRMAN. Thank you.

Mr. Moorman, you may proceed.

STATEMENT OF MARK MOORMAN, PRESIDENT, IDAHO IRRIGATION PUMPERS ASSOCIATION

Mr. MOORMAN. Thank you, Mr. Chairman and members of the committee.

My name is Mark Moorman. I am a farmer from Burley, Idaho, and also president of the Idaho Irrigation Pumpers Association.

I am also a director of the Farm Water Alliance.

Our farm is a family farm. It was started by my dad in southern Idaho. Our farm is not really a big farm in comparison to some of those in the Pacific Northwest and in California.

I am an excess landowner. Frankly, I am afraid I am a part of those false statistics you mentioned and as Secretary Watt mentioned in his 99-plus percent of compliance landowners. I hate to admit that but it is actually a fact.

One of my main concerns goes to section 202 of your bill which requires the irrigation district contract to be amended before a landowner can take advantage of the new higher ownership limits which are being proposed.

I would also add that your acreage limits are very welcome indeed with the 1,600 acres plus 1,600 leased as a minimum.

I believe if this contract amendment requirement stays in this legislation, there will be very few farmers who will be able to take advantage of the higher limit because the irrigation district board simply will not go to the trouble of amending their contracts. Mr. Chapman suggested this also.

I should point out that if this happens one of the main problems this legislation was intended to solve is not going to be solved.

I also want to make the point that if this happens, it will be the farmers in the Northern Tier States and not California who will be hurt the most. This is true basically because the acreage limitation laws have been enforced in California and have been mainly ignored in many areas in other States.

An amendment to correct this problem is included with those being submitted by the farm water alliance. I would like to point out the alliance has tried hard to seek a consensus on all of these issues throughout the reclamation States. We believe they represent the views of all the West.

It is my feeling that if this legislation is not passed the farmers in Idaho alone are going to lose in excess of $67 million in farmland value because of the necessity of selling their excess land at dry land values, even though they may have bought or developed it in good faith as irrigated land, not knowing there was any problem with acreage limitation.

I would certainly urge consideration of the very minimum of 1,600 acres plus 1,600 acres leased.

I would also like to urge the committee to retain the provisions in this legislation covering payout, validation of contracts and written representations and unlimited leasing.

I would sincerely urge you to move forward with this legislation as soon as possible as you have already stated that you would do.

We are told there is a possibility that the Secretary will be moving forward early in 1982 with hearings on the regulations as proposed by former Secretary Andrus.

If we are going to get relief from this problem, we ought to get it as soon as possible to avoid the necessity of being put through all the trouble and expense of going through the hearing process to fight those regulations.

I wish to thank you very kindly for the opportunity to appear here today.

[The prepared statement of Mr. Moorman follows:]

TESTIMONY OF

Mark Moorman, Burley, Idaho

President, Idaho Irrigation Pumpers Association

Washington, D.C.
December 8 - 11, 1981

Before the

Water and Power Resources Subcommittee
House Committee on Interior and Insular Affairs

And the

Committee on Energy and Natural Resources
United States Senate

Washington, D.C.

Mr. Chairman, members of the committee:

My name is Mark Moorman. I am from Burley, Idaho, and I am the president of the Idaho Irrigation Pumpers Association. I am here to express my support for the concepts of both the Lujan bill, H.R. 4265 and the McClure bill, S. 1867. In terms of the acreage provisions, I would prefer the provisions of the McClure bill because it would give us all a little more flexibility.

However, my main purpose in being here is to talk about some of the specific provisions of these bills which I believe could be improved upon. In one instance, unless some change is made, I do not believe the bills will do a bit of good for a lot of people.

The change which I believe is most important is Section 202 of both bills. This section provides that an irrigation district contract must be amended before individual landowners within a district will be able to take advantage of the higher ownership limitations provided in the bill. This applies to both the McClure bill and the Lujan bill.

I am not a big farmer measured by the standards of some of the others in our state or in other parts of the northwest, but I am considerably in excess of what the present law permits. I suppose in a way it is because of people like me that we're in a bind on this issue. We all started out thinking it was the folks in California who had ignored the excess land laws, but as the facts have unfolded we have found that the Californians are in compliance and it is the other states where the excess land laws are being ignored. Figures put together by the Farm/Water Alliance, based on official figures from the Department of Interior, show there is more excess land getting water illegally in Idaho than any other state--and I suspect that the reported figures for most of the northern tier states are low.

The significance of this is that the way Section 202 is worded, the board of directors of our district will have to vote to amend our contract before I can take advantage of the new limitation. I have great doubts whether our board of directors would be willing to do that just to get four or five of us off the hook. I suspect the same thing is true of most other districts around the west. If that's the case, it really doesn't make any difference what the acreage limitation figure is because there will be very few districts that will be able to take advantage of it. In some states the amendment of an irrigation district contract is an extremely complicated business, involving an election, approval of various state agencies, and so on.

What is needed is an amendment of this section to make the new limitation self enacting, so that present landowners can come to compliance with a new, higher limit without the necessity of amending the district contract. Without such an amendment this bill will do little to solve the present excess ownership problem.

A second matter I should like to touch on is the payout provision. This is covered in Section 106. Most of the irrigation districts in Idaho have contracts which provide for individual as well as district repayment. I do not happen to be in such a district.

However, it has been our understanding through the years that when we paid off, acreage limitations ceased, whether or not the contract so provided. Now the Tulare Lake decision appears to have changed all that. I believe the Congress should make clear that payout does extinguish acreage limitations.

I recall that in the debate over this issue in the last congress, there were concerns expressed that this would enable farmers in the Central Valley Project to pay off and get out from under acreage limitations. It is my understanding that because of the way the CVP was developed, a new repayment calculation is made for the entire project every time a new unit is brought on line. As a result of that, according to my understanding, there is practically no chance that the CVP will ever be paid out because new units are being added from time to time. If that is so, I can't see what worries anybody should have about payout.

Another issue that is of importance in Idaho is the validation of contracts and written representations. As I have indicated, there are dozens of contracts in Idaho that permit early payout--either by the district or by an individual. The Tulare Lake decision has knocked these contracts out, even though they were approved by the Secretary of the Interior prior to being signed in 1952. These contracts should be validated.

In addition to contract validations, written representations of responsible officials of the Bureau of Reclamation and the Department of the Interior--whether relating to a contract or not--should be validated. Certainly if an individual or an irrigation district takes an action based on assurances from the responsible administrative official as to what the law is on a given point, or how the law would be applied on a given point, then the citizen or district ought to be able to rely on that assurance. If we cannot rely on the government to live up to its commitments, who in his right mind is going to have anything to do with the government? What this committee must remember is that most irrigation districts in the west are relatively small and do not have a staff of high powered lawyers and engineers to look after their interests. If they are told something by the regional director or the regional solicitor of the bureau, they probably take him at his word and do not expect that at some future date the government would pull the rug out from under them.

Mr. Chairman, I would also like to urge the committee to retain the provisions in the proposed legislation which permits unlimited leasing. Most farmers realize that they've got a good deal in their irrigation contracts and would be willing to accept some form of differential pricing for lands farmed beyond some amount. I would hope, however, that the definition of full cost would not be such that it would cause a punitive price to be charged. It is, after all, the government that is changing the rules in the middle of the game--not the farmer. Most farmers cannot afford protracted litigation in the federal courts and would prefer, instead, to find a solution to this pricing problem that is fair. If a fair solution is not found, either this legislation will become so controversial that it will not be passed, or the farmers involved in leasing will wind up in court again defending what they believe to be their rights.

There are many other things that could be said about this legislation, but I believe most of it will be covered by others and does not need to be repeated.

In conclusion, Mr. Chairman, I would like to urge the committee to give favorable consideration to the amendments and suggestions of the Farm/Water Alliance. As near as it is possible to reach a consensus on the many difficult problems involved in anything relating to water, the Alliance represents that consensus and it has tried to address all of the problems in such a way as to not cause difficulties for other people.

Thank you.

The CHAIRMAN. Thank you very much. I appreciate your appearance.

Alice Parker is next. You may proceed.

STATEMENT OF ALICE PARKER, ROYAL CITY, WASH. ON BEHALF OF THE P & P FARMS, INC.

Ms. PARKER. Thank you, Mr. Chairman. Greetings to you and the members of your committee from Washington State.

I am Alice Parker from Royal City, Wash. I am pleased to be able to come here today to testify before you in regard to reforming the 1902 Reclamation Act.

I am here today representing P & P Farms, Inc. P & P Farms is a family farm corporation with the officers and the operators being the same.

My husband Ivan is the president, our son Perry is the vice president and I am the secretary and treasurer. We all share in major management decisions and we do make decisions individually as the need arises.

My major responsibility is the bookkeeping although I help with the outside work whenever needed.

Our farm is a diversified irrigated farm and is in the Quincy Irrigation District which is part of the Columbia Basin Project. In 1981 we farmed 457 acres, all of which we own, raising wheat, corn, and dry edible beans, with a few acres of alfalfa and irrigated pasture. We also own 63 acres of dryland that lies directly above our irrigated acres.

The 1902 Reclamation Act is an act that was written in the days of the horse-drawn plow. Farmers have progressed over the past 79 years and now feed 68 other people by using modern equipment.

Where would our country be today if policymakers would have neglected to change the other laws on the books over the last 79 years?

I hope that you will agree with me that it is unfair to expect farmers to live with 1902 restrictions when our Nation is asking and expecting the American farmer to supply an abundance of high quality cheap food.

Don't you think it is long past time that this act be reformed? I do and that is why I am here today. My husband and son have sent me to tell you how the Reclamation Act is affecting us as farmers on the project lands.

In 1965 we purchased two units or 226 acres and with the help of our family, our son, and two daughters, we developed these two units. In 1971 we leased three adjoining units making us a total of 514 acres. This gave us enough land to warrant buying needed equipment. Previously we had to rely on custom farmers which many times hurt your efficiency.

In 1972 we purchased two more units that came up for sale giving us a total of 745 acres. We were still using the same equipment that was needed for the original 226 acres. Adding these acres, we were able to spread the cost over the entire acreage.

In 1980 we lost the 288 acres that we were leasing as the landlord decided to farm himself which cut us back to 457 acres and not enough to warrant the expensive equipment. Ten years of hard work and using the best conservation practices went into developing this land into productive farmland. It was disappointing to lose this land but when a farmer leases that is what sometimes happens.

Many times land that is available for leasing is land that has not had the best conservation practices applied.

We do not oppose leasing but we do prefer owning for those reasons. I hope that the acreage limitations will be raised so that it will not force us to rely on leased land for an economically feasible farm.

In 1977 at the Department of Interior field hearings, I testified in Yakima, Wash. I listed at that time the bare minimum of equipment needed to farm the 745 acres for the crops we were raising.

Again I include that list and I am also including the 1981 prices. You will see that over the last 4 years the same equipment has increased in cost $111,950, or a 37-percent increase. That only shows that we need more acres.

In 1980 we were forced to purchase a new combine as equipment does wear out beyond the point of repair. With the loss of the 288 acres we have had to rely on custom combining to warrant the cost of the combine. When doing custom work and expect to get business and accommodate your customers, it is often at the expense of your own farm's efficiency.

In 1976 the Bureau of Reclamation notified us that we were eligible for lieu land and a partial on the Waluke Slope. We purchased the 74 acres but since it is 45 miles away from our home farm, it is not feasible for us to farm ourselves.

We are now leasing it to a farmer in that area. Since this 74 acres is in a different irrigation district, it was possible for us to own under the Reclamation Act. Last winter we had some pieces come up for sale close to home. We wanted to sell that 74 acres but the Reclamation Act prevented us from doing that because we would have been over the 160-acre limitation in one irrigation district.

The unanswered question is, When will that opportunity arise again or will it? If it does, will the Reclamation Act be amended to allow us to take advantage of it?

I am pleased to see that you are considering repealing the residency requirement and equivalency provision. Both are needed amendments. I do take exception to religious or charitable organizations not being restricted to acreage limitations. It is becoming increasingly difficult for family farmers to compete with these groups when they are eligible and have access to purchase Government surplus equipment, and so forth, at a very small or highly reduced cost. If such groups are farming to make a profit for whatever reason, they should have the same restrictions as other farmers.

I urge you as policymakers to arrive at a consensus that will make this reform fair, equitable, and beneficial to the majority of the farmers on the reclamation projects, and that you do so expeditiously.

In closing let me reiterate that I think it is long past time that the 1902 Reclamation Act be revised and thank you for allowing me to come and testify.

[The prepared statement of Ms. Parker follows:]

ORAL AND WRITTEN TESTIMONY PRESENTED
by ALICE PARKER
to the
SUBCOMMITTEE HEARINGS
ON THE REFORM OF
THE 1902 RECLAMATION ACT

Mr. Chariman and Members of the Committee:

I am Alice Parker from Royal City, Washington. I am pleased to be able to come here today to testify before you in regards to reforming the 1902 Reclamation Act.

Although I am a member of the Office of Technology Assessment's study panel on "Water Technologies For Sustaining Agriculture in Arid and Semiarid Lands" and a member of W.I.F.E. (Women Involved In Farm Economics) and other farm organizations I am here today representing P & P Farms Inc. P & P Farms is a Family Farm Corporation with the officers and operators being the same. My husband Ivan is President, our son Perry, Vice President and I am the Secretary and Treasurer. We all share in major management decisions and we do make decisions individually as a need arises. My major responsibility is the bookkeeping although I help with the outside work when ever needed.

Our farm is a diversified irrigated farm and is in the Quincy Irrigation District which is part of the Columbia Basin Project. In 1981 we farmed 457 acres, all of which we own, raising wheat, corn and dry edible beans with a few acres of alfalfa and irrigated pasture. We also own 63 acres of dryland that lays directly above our irrigated acres.

The 1902 Reclamation Act is an Act that was written in the days of the horse drawn plow. Farmers have progressed over the past 79 years and horse drawn plows are on longer in style. Farmers now feed 68 other people by using modern equipment. Where would our country be today if policy makers would have negelected to change other laws on the books over the last 79 years? I hope that you agree with me that it is unfair to expect farmers to live with 1902 law restrictions when our nation is asking and expecting the American Farmer to supply an abundance of high quailty CHEAP FOOD. Don't you think it is long past time that this Act be reformed? I do! That is why I'm here today. My husband and son sent me to tell you how the Reclamation Act is affecting us as farmers on Project Lands.

In 1965 we purchased two units or 226 acres and with the help of our family, our son and two daughters, developed these 2 units. In 1971 we leased 3 adjoining units making us 514 acres. This gave us enough land that waranted buying needed equipment. Previously we had to rely on custom farmers which many times hurt our efficiency. In 1972 we purchased 2 adjoining units when they came up for sale giving us a total of 745 acres. We were still using the same equipment that was needed for the orginal 226 acres. Adding these acres we were able to spread the cost over more acres.

In 1980 we lost the 288 acres we were leasing as the landlord decided to farm himself which cut us back to 457 acres and not enough to warrant expensive equipment. Ten years of hard work and using the best conservation practives went into developing this land into productive farmland. It was disappointing to loose this land, but when a farmer leases that is what sometimes happens. Many times land that is available for leasing is land that has not had the best conservation practices applied. We do not oppose leasing but we do prefer owning for those reasons. I hope that the acreage limitation will be raised so that it will not force us to rely on leased land for an economically feasible farm.

In 1977 at the Department of Interior Field Hearing in Yakima, Washington I testified listing the bare minimum of equipment needed to farm the 745 acres for the crops we were raising. Again I am including that list and including the 1981 prices. These costs were quoted to me by the same reputable John Deere Dealer in my area.

	1977 prices	1981 prices
110 horsepower tractor	$28000	$41600
130 horsepower tractor	31500	46300
4 bottom plow	4500	6500
plow packer	1375	1700
12 foot disc	4415	6000
13 foot packer	1400	2000
6 row planter*	2735	4100
12 foot drill	4120	6000
cultivator	1075	3400
combine	55000	85000
bean cutter	2500	5500
3 row beet harvester	20835	**
beet topper	6000	**
swather	10500	33000
baler	9270	12000
rake	2150	2800
headlander	1300	2200
spray rig	1810	2500
shop equipment	2000	3000
truck	15000	25000
pickup	6000	8000
Total	$211485	$296600

*complete with tool bar, markers, planter boxes and corrugators.

**The sugar beet equipment has been deleted from the 1981 prices as we are one of the victims of the closing of the sugar factories across the nation.

If considering buying used equipment then the same dealer told me to plan on ½ the new price plus additional costs for repairs and maintenance that is needed for used equipment. I have not included the cost of irrigation equipment such as siphon tubes or sprinkler irrigation systems as those are costs per acre unit and not costs that can be spread over all acres. After subtracting the beet equipment from the 1977 prices you will see that over the last 4 years the same equipment has increased in cost $111950 or a 37% increase. That shows the need for more acres.

The summer of 1980 we were forced to purchase a new combine as equipment does wear out beyond the point of repair. With the loss of the 288 acres we have had to do custom combining to warrant the cost of the combine. When doing custom work and expect to get business you have to accomodate your customers. Sometimes it is at the expense of your own farms efficiency.

In 1976 the Bureau of Reclamation notified us that were eligible for lieu land and a partial on the Waluke Slope was available. We purchased the 74 acres but since it is 45 miles away from our home farm it is unfeasible for us to farm ourselves. We are now leasing it to a farmer in that area. Since this 74 acres is in a different irrigation district it was possible for us to own it under the Reclamation Act. Last winter (1980-1981) two different pieces came up for sale within 3 miles of our home place. We wanted to sell the 74 acres and buy close to home but it was impossible. The Reclamation Act prevented it. Had we been able to do so we would have had an economically feasible farm again.

The unanswered question is now when will that opportunity arise again or will it. If it does will the Reclamation Act be ammended to allow us to take advantage of it.

As to pending legislation to amend the Reclamation Act I am pleased to see that you are repealing the residency requirements and including an equivalency provision. Both are needed amendments to make the act fair and equitable. I do take exception that religious or charitable organizations will not be restricted to acreage limitations. It is becoming increasingly difficult as family farmers to compete with these groups when they are eligible and have access to purchase government surplus equipment and etc. at a very small or or highly reduce cost. If such groups are farming to make a profit for what ever the reason they should have the same restrictions as other farmers.

I urge you as policy makers to arrive at a consensus that will make this reform fair and equitable and beneficial to the majority of the farmers on the Federal Reclamation Projects and you do so expeditiously. In closing let me reiterate that I think it is long past time that the 1902 Reclamation Act be revised.

Thank You for allowing me to come and testify.

The CHAIRMAN. Thank you very much. I think your testimony is typical of many farmers who do find exactly what you find. You have to buy larger equipment to stay in the business and in order to afford that you have to spread it over more acres.

It works better. It works faster. You can get over more acres and unit costs of production have gone down and the American consumer and the international balance of payments have benefited from that increased efficiency.

One of my concerns in setting an acreage limitation is that we do not set the ceiling at the absolute minimum of current levels of efficiency because agriculture is changing. As you have pointed out, it has changed dramatically in the last 2 or 3 years. I suspect it will continue to change.

I hope we do not pass an act that becomes obsolete before the ink is dry on the signatures.

Ms. PARKER. I do, too.

The CHAIRMAN. Thank you. Senator Bumpers?

Senator BUMPERS. Mr. Chairman, as a Senator whose State is not affected by this legislation, I want to be as thoughtful about our approach to this as I can be because I recognize people's livelihoods are involved in the action we take.

I would like to ask Mr. Moorman a few questions.

Mr. Moorman, what do you raise mostly?

Mr. MOORMAN. We have quite a large variety of crops: Sugar beets. We did not have potatoes this year. I am in the potato growing area. We have substantial acreages of wheat and barley, commercial beans like great northerns and a very large variety of garden contract seed beans; alfalfa seed, carrot seed, onion seed, and a lot of hay.

Senator BUMPERS. I have often wondered where some of those came from. That is very interesting.

Mr. MOORMAN. It is a very diversified area we are in. My farm actually grows most of those products.

Senator BUMPERS. How many acres do you own? How many do you run?

Mr. MOORMAN. We actually own a little over 900 acres. I just sold one farm of 1,050 acres. We are just slightly under the 2,000-acre mark.

Within 5 miles of my place, I have three neighbors that are farming 3,000 acres or own 3,000 acres or more.

Senator BUMPERS. Each farmer?

Mr. MOORMAN. Yes, each farmer. These are all family farms. They are strictly 100-percent family farms. At least three of them are family corporations. They tend to fall into the corporation category.

Senator BUMPERS. When did you acquire most of this land?

Mr. MOORMAN. My father originated the irrigation district that we are under in 1921. I grew up on the family farm with the exception of 5 years on a farm in the State of Montana.

I started working with the Idaho farm in 1932. I have basically grown up and this land has developed as we have gone along.

Senator BUMPERS. It is mostly inherited land from your father?

Mr. MOORMAN. No. Most of the land I own now was land purchased and developed by my family.

Senator BUMPERS. How many people do you employ outside your family?

Mr. MOORMAN. This particular year my place is leased out. We do not have so many people working. There are basically about nine families that are on the farm.

Senator BUMPERS. When you say your place is leased out, did you not personally farm it? Did you lease it to someone else?

Mr. MOORMAN. I leased it out to someone else this year. Most of it was leased out last year.

Senator BUMPERS. How many farmers in your association would be affected if we adopted an acreage limitation as proposed by Secretary Watt?

Mr. MOORMAN. I would say probably at least 125 farmers.

Senator BUMPERS. Over 900 and some acres?

Mr. MOORMAN. Yes.

Senator BUMPERS. How many would it not affect? How many own or operate less than that?

Mr. MOORMAN. That is going to be difficult to answer simply because the Idaho Irrigation Pumpers Association represents somewhere around 5,000-plus farmers that mainly pump out of the aquifer, that is a deep-well operation. It would be difficult for me to say.

We figured that statewide, according to Mr. Chapman's acreage, there are at least 85,000 acres in the State of Idaho in excess now.

Senator BUMPERS. Do you mean in excess of the legal limitation right now?

Mr. MOORMAN. Yes, of the 160 acres per man plus 160 acres for leasing.

Senator BUMPERS. 85,000 acres that are in excess. That does not sound like a lot to me.

Mr. CHAPMAN. Senator, if I may clarify that. That was in the categories that would be affected by the 1977 regulations that were promulgated by Secretary Andrus which included those individuals that would be affected by residency requirements, excess land, and multiple ownership in districts.

The total was right at 95,000.

Senator BUMPERS. Ms. Parker, you said you and your family are now farming a little over 400 acres?

Ms. PARKER. Yes.

Senator BUMPERS. At one time you were farming, counting what you owned and what you leased, a little over 800 acres?

Ms. PARKER. It was 700 plus.

Senator BUMPERS. Would you consider that to be a viable economic unit?

Ms. PARKER. At that time, yes. I am saying that was 4 years ago and with the increase of prices for the same equipment which is $111,000 plus, that only is telling us we are going to have to have more land to warrant that much more expense on equipment.

Senator BUMPERS. Could you own a combine if you had 900 acres? Could you buy a combine?

Ms. PARKER. I think we could. I guess the reason we could do that is because of the type of farming and the diversification that we do. We maybe are unique in our style of farming. We have set up our farm into rotation so we are not trying to plant everything at one time like those who are restricted to one particular commodity.

Our wheat goes in the fall. Our corn goes in early in spring and we follow up with the beans. When it comes harvest time we take our wheat off and then our beans and then our corn.

The three of us with a couple of extra men during busy times can handle the work ourselves. It is a continuous operation. We could warrant that combine if we were farming the 960 acres.

Senator BUMPERS. Do you get double crops off any of this? Can you follow your wheat with something else?

Ms. PARKER. No. Years ago when we first moved to the Columbia Basin and developed our project, we did. Sometimes the only double cropping in that area is with the green peas and the green peas go off in time and you can either get a crop of short season beans or sweet corn. You have to have contracts to get the sweet corn and the green peas.

It is a touchy situation. We lost a crop of beans by trying to do that one time. It was quite expensive as an experiment.

Senator BUMPERS. Ms. Parker, you now own and operate a little over 400 acres. If we passed the bill of, say 900 acres, as the limitation, would you be able to acquire outright or by lease additional land and if you were able to acquire additional land by purchase, would you be able to get the water for it?

Ms. PARKER. Yes, if the Reclamation Act is amended and if the land comes up for sale that is close to our place.

Senator BUMPERS. Would you have to buy land that now has a water allotment?

Ms. PARKER. Yes.

Senator BUMPERS. If you were going to buy land that was not now being irrigated, you would have to go through some sort of procedure I assume to get more water for it. Is that correct? Is that possible today?

Ms. PARKER. No. The land in our particular area is all under the irrigation project except for a particular small narrow space, a few acres on top of a hill that is not feasible to irrigate. That is the dryland acreage we own.

The rest is all under the Columbia Basin Project. Yes. We would have to go through the irrigation district if we farmed additional ground.

Senator BUMPERS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I would like to announce that Senator Nickles has agreed to chair for a few minutes while I attend to some other matters. I very much appreciate it.

Senator BUMPERS. Mr. Chairman, I will try to get back also. I am going to a hearing on the President's proposal to abolish the Energy Department and see if I can save it.

Senator NICKLES [presiding]. Ladies and gentlemen, we appreciate your assistance before the committee and also your testimony and input on this legislation.

Our next panel is John Specht, president of the National Water Resources Association from Washington, D.C.; E. Clinton Stokes, director of food and agriculture, U.S. Chamber of Commerce from Washington, D.C. and Vern Crowder, assistant vice president of public affairs, Security Pacific National Bank representing the Los Angeles Chamber of Commerce.

Welcome, gentlemen. Mr. Specht, you may proceed. I would advise everyone that all statements will be inserted into the record in full. We would appreciate if you would somewhat summarize.

STATEMENT OF JOHN SPECHT, PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION

Mr. SPECHT. Mr. Chairman and members of the committee, the National Water Resources Association is an association of State water users from the 17 Western States and Hawaii. We have been in existence for some 50 years.

Our members who irrigate in excess of 25 million acres include most of the reclamation irrigation farms of the West as well as over two-thirds of the municipal water users in that region.

All of our members including a significant portion of the industrial and commercial water users in our State affiliates have expressed as a high priority their interest in this hearing and the decisions affecting the necessary changes in reclamation law.

NWRA has advocated legislation to modernize the 1902 reclamation law for over 20 years. As a part of our quest to achieve that legislative goal, we helped create the Farm/Water Alliance and have actively been involved in its work.

The Farm/Water Alliance is simply a group of interested associations representing the grassroots opinions of thousands of irrigation farmers who have banded together for the sole purpose of amending the original act.

The Reclamation Act has served the Nation well but it clearly needs to be updated. It needs to be updated not only to reflect modern farming practices and current agricultural economic conditions but also to take into account the fact that the law is not a single purpose law.

It has been made to serve the national interest in a variety of ways to meet the changing needs of society in the intervening 79 years.

The resolution and position statement which is attached was adopted by our members at our recent convention held in Albuquerque, N. Mex. in November of this year and specifically addresses our recommendation.

We believe that S. 1867 now before the committee would basically achieve these goals.

I would call attention to the need to adjust the 160-acre provision of Public Law 84-984 and Public Law 84-130 to make them consistent with any changes in reclamation law redefining the 160-acre limitation. Those public laws are the Reclamation Small Project Acts.

NWRA concurs with the statement and position that will be taken by the Farm/Water Alliance a little later in this hearing.

I wish to thank you, Mr. Chairman, for having these hearings. This call reflects the interest of the chairman and the interest of the members of the committee in providing the West with a practical solution to the problems now faced by irrigation farmers.

[The resolution attached to Mr. Specht's statement follows:]

RESOLUTION 81-12
PRINCIPLES OF RECLAMATION LAW REFORM

To urge Congress to enact appropriate amendments to the Reclamation Law to provide that:

1. There should be a basic ownership entitlement of 1,600 acres eligible to receive project water.

2. Ownership should be increased in excess of the basic entitlement when required to equalize climate or soil conditions or availability or quality of water with Class 1 land.

3. Farmers, including corporations, partnerships, or other legal entities should be allowed to own or lease lands in excess of the basic entitlement provided they are willing to pay for the water for additional lands up to the full cost to the United States, including interest, existing at the time the contract was signed, or when the project was completed, whichever was earlier.

4. Residency should not be a part of reclamation law. Instead, buyers of excess land, having purchased at prices not reflecting project benefits, should not be allowed to profit from a sale of such land for the first ten years after its purchase.

5. Lenders should be able to fully finance farmers of reclamation land based on the fair market value of the land.

6. All prior written representations, contracts, and exemptions made by and between the United States and contracting entities, farmers and landowners should be honored and validated. These include, but are not limited to, representations that:

   a. They could lease and operate their farms restricted only by the limitation on ownership;

   b. They would be free of acreage limitations when the agreed repayment obligation had been repaid.

7. Reclamation law should not apply to Corps of Engineers projects except when specifically made a part of a reclamation project by authorizing statute.

8. All acreage limitation should cease at any time upon payment of the agreed repayment obligation of the contracting entity.

9. Landowners should be free to operate or have their farms operated without management controls by any government agency.

10. Recordable contracts should be for a period of ten years with the right to sell to buyers of the seller's choice at a price which does not reflect the project benefit and be extended for such periods as sales are not processed.

11. Contracting entities should have the right to amend their contracts to obtain the benefit of any new law without additional conditions imposed by the Secretary of the Interior.

12. The United States should consent to be sued so that contracting entities would be entitled to receive project water as a remedy and not just money damages.

13. State owned school trust lands be exempt.

14. Project water should continue to be available to bona fide religious or charitable nonprofit organizations if agricultural proceeds are used directly for charitable purposes.

15. Agricultural land which under contract is temporarily supplied with project water pending its use for municipal or industrial purposes should be exempt.

16. Project water should be supplied to agricultural land in unusually wet years or from flood flows without application of acreage limitation.

17. A method should be adopted on a case-by-case basis, where water user contracts do not provide for comingling, to increase land limitations when water from a federally financed project is comingled with non-project water, so as to continue the provisions of law that reclamation law does not apply to non-project water.

18. The 160 acre provision of Public Law 84-984 and Public Law 84-130 should be arithmetically adjusted consistent with any changes in reclamation law redefining the 160 acre limitation.

Senator NICKLES. Thank you.
Mr. Stokes.

STATEMENT OF E. CLINTON STOKES, DIRECTOR, FOOD AND AGRICULTURE, RESOURCES AND ENVIRONMENTAL QUALITY DIVISION, U.S. CHAMBER OF COMMERCE

Mr. STOKES. Thank you, Mr. Chairman.

I am E. Clinton Stokes, director of food and agriculture, U.S. Chamber of Commerce.

The chamber supports the concept of regulatory reform as embodied in S. 1867 and given improving amendments supports its basic provisions.

My testimony focuses on four major provisions of the bill: Farm size, qualified recipients; resident requirements and Corps of Engineers' projects.

Section 5 of the 1902 act prohibits delivery of Federal waters to irrigation landholdings exceeding 160 acres. The purpose of this provision was to promote homesteading of the arid lands.

Although only 17 reclamation States are directly affected, the provisions of the proposed legislation have much broader national implications. My testimony addresses these national issues.

On farm size, one of the traditional tenets of the U.S. enterprise system is that no limit be placed on the size of a private enterprise business under competitive market conditions.

The U.S. chamber supports the spirit of S. 1867 to increase the flexibility of the acreage limitation.

Title I of the bill permits reclamation districts to continue under the present law which provides an ownership limitation of 160 acres per individual or legal entity.

Section 105 explicitly exempts leased land from the acreage limitations under the act. The chamber supports these provisions in the event Congress deems it necessary to continue acreage restrictions under the Reclamation Act.

We support section 106 of S. 1867 which would eliminate any acreage restriction on the delivery of irrigation water where a district discharges its obligation for the repayment of the construction costs of the project facilities used to make water available for delivery to such lands.

Under title II, it provides an option for increased acreage limitations and payout provisions. Under this title a qualified recipient would have the option of owning up to 1,600 acres and leasing an additional 1,600 acres. The recipient of irrigated water could elect to expand his holdings in excess of the 3,200 acre mark only if he pays full cost for the water supplied for all lands leased in excess of the 1,600 acre base.

The chamber supports this option except for the definition of qualified recipient.

Accordingly, the chamber recommends an amendment to section 201(b) of S. 1867 which defines qualified recipient as an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under the State or Federal laws which benefits 25 such individuals or less.

We recommend putting a period after law and deleting the remainder of the sentence, that is benefits 25 such individuals or less.

This limitation is designed to disqualify under the provisions of title II legal entities which are owned by more than 25 individuals or stockholders.

The U.S. chamber firmly supports the right to farm or otherwise engage in agriculture as in any other business whether as a part- or full-time operator or a nonoperator investor.

This should be the free choice of all individuals regardless of the type of business, as long as there are no monopolistic controls over the production of any commodity or violation of antitrust laws, there should be no restrictions on the type of ownership, size of farm or business operations.

On residency, section 101 of S. 1867 would abolish the residency requirement. The chamber supports this provision.

Army Corps of Engineers' projects which are built primarily for flood control and other nonirrigation purposes should not be subject to the acreage limitations.

In conclusion, an end to acreage limitations should be the ultimate goal. They inhibit advancements in economic and technological developments and can ultimately impair America's competitive strength in world markets. In the event that such restrictions are continued after amendatory legislation, these limitations should be administered as broadly and as flexibly as practicable.

Thank you.

[The prepared statement of Mr. Stokes follows:]

STATEMENT
on
AMENDMENT TO THE FEDERAL RECLAMATION LAW (S.1867)
before the
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
E. Clinton Stokes
December 10, 1981

Mr. Chairman, members of the committee, my name is E. Clinton Stokes, Director, Food and Agriculture, Resources and Environmental Quality Division, U.S. Chamber of Commerce. I am accompanied by Tatiana Roodkowsky, Associate Director of the same division.

The United States Chamber of Commerce represents more than 201,000 members including 1,350 trade associations, and 2,730 local and state chambers of commerce. The Chamber is the world's largest business federation. Our membership includes many farmers and ranchers who are dependent on irrigation water. It is from this broad perspective that we address the legislation before this subcommittee.

The Chamber supports the concept of regulatory reform as embodied in S.1867, and, given improving amendments, would support its basic provisions. My testimony focuses on four major provisions of the bill:

1. Farm Size
2. Qualified Recipients
3. Residence Requirements
4. Corps of Engineers' Projects

Section 5 of the 1902 Reclamation Act prohibits delivery of federal waters to irrigated landholdings exceeding 160 acres. The purpose of this provision was to promote homesteading in the arid west.

However, over the years, the Department of Interior did not enforce some provisions of the Act -- such as the residency requirement and acreage limitations. In 1976, as a result of a suit brought by National Land For People, Inc., a United States District Court ordered the Bureau of Reclamation to commence strict enforcement of this outdated Act. Although only the 17 reclamation states are directly affected, the provisions of the proposed legislation have much broader national implications. This testimony addresses these national issues.

Farm Size

The average size of farms has risen dramatically since 1902, primarily because 160 acres is no longer adequate to sustain an economical farm. In 1902, the average farm was approximately 140 acres; in 1980 it was 429 acres. Additionally, in 1902, the average farm worker produced only enough for himself and six other people. Last year, the average farm worker produced enough for 77.5 other consumers, many of whom live in other countries.

One of the traditional tenets of the United States' enterprise system is that no limit is placed on the size of a private business under competitive market conditions. The 160 acre limitation, imposed nearly 80 years ago, is counter to this tenet. This issue has been the subject of long-standing debate among the government, those who would limit or redistribute land holdings, and farmers. Therefore the U.S. Chamber supports the spirit of S.1867 to increase the flexibility of the acreage limitation.

Title I of the bill permits reclamation districts to continue under the present law which provides an ownership limitation of 160 acres per individual or legal entity. Section 105 explicitly exempts leased land from the acreage restrictions under the Reclamation Act. The Chamber supports these provisions in the event that Congress deems it necessary to continue acreage restrictions under the Reclamation Act.

Title II provides an option for increased acreage limitations and payout provisions. Under this title a "qualified recipient" would have the option of owning up to 1,600 acres and leasing an additional 1,600 acres. Further, the recipient of irrigated water could elect to expand his landholdings in excess of the total 3,200 acre mark only if he pays full cost for the water supplied for all lands leased in excess of the 1,600 acre base. The Chamber supports this option except for the definition of "qualified recipient." This definition in effect prohibits large corporations from participating in the option under Title II. Our opposition to this restriction is discussed under the next section.

We support Section 106 of S.1867 which would eliminate any acreage restriction on the delivery of irrigation water where a district discharges its obligation for the repayment of the construction costs of the project facilities used to make water available for delivery to such lands.

Qualified Recipient

The Chamber recommends an amendment to Section 201(b) of S.1867 which defines "qualified recipient" as "an individual who is a citizen of the United States or a resident alien thereof, or any legal entity established under state or Federal law which benefits twenty-five such individuals or less." We recommend inserting a period after "law" and deleting the remainder of the sentence. This limitation is designed to disqualify, under the provisions of Title II, legal entities which are owned by more than 25 individuals or stockholders. The U.S. Chamber firmly supports the right to farm or otherwise engage in agriculture, as in any other business, whether as a part or fulltime operator, or a nonoperator investor. This should be the free choice of all individuals regardless of the business. As long as there are no monopolistic controls over the production of any commodity or violation of antitrust laws, there should be no restrictions on the type of ownership, size of farm or business operations.

Residency Requirements

Many farmers do not wish to live on their land. A 1974 U.S. Bureau of Census report found that nearly one-fourth of all farmers do not maintain a residence on their tilled land. One of the reasons for this is that farmers often own separate parcels of land as they expand operations so as to lower per-unit costs and reduce the risk of crop losses and/or depressed markets. Another reason is that some farmers prefer the amenities of an urban community. Section 101 of S.1867 would abolish the residency requirement. The Chamber supports this provision.

Army Corps of Engineers' Projects

Section 8 of the Flood Control Act of 1944 stipulates that if the Army Corps of Engineers builds any dam or reservoir for irrigation purposes, the Secretary of Interior is authorized to "construct, operate, and maintain, under the provisions of the federal reclamation laws...such additional works in connection therewith as he may deem necessary for irrigation purposes." The Interior Department has interpreted this section to apply the 160 acre limitation to Corps projects and a federal appeals court decision agrees with this interpretation. If all Corps projects were required to comply with the 160 acre ownership limitation, projects in the Eastern states, which have been free of such limitations, would be covered. Corps projects, which are built primarily for flood control and other non-irrigation purposes, should not be subject to acreage limitations.

The Chamber supports Section 104 of the bill which excludes Corps projects from acreage limitations, except where specifically designated by Congress.

Conclusion

The Chamber supports a speedy end to the 160 acre limitation on federally irrigated land. Efficient and productive farming operations are vital to the national economy. An end to acreage limitations should be the ultimate goal; they inhibit advancements in economic and technological developments and can ultimately impair America's competitive strength in world markets. In the event that such restrictions are continued after amendatory legislation, these limitations should be administered as broadly and flexibly as practicable.

Senator NICKLES. Thank you, Mr. Stokes.

Our next witness is Vernon Crowder, assistant vice president, Public Affairs, Security Pacific National Bank from Los Angeles.

STATEMENT OF VERNON M. CROWDER, ON BEHALF OF THE LOS ANGELES CHAMBER OF COMMERCE

Mr. CROWDER. Thank you, Mr. Chairman.

As you indicated, I do represent the Los Angeles Area Chamber of Commerce. That chamber represents 3,500 firms spread out through five counties of southern California, an area that is usually thought of as very urban and not having much interest in agriculture.

I also work for Security Pacific National Bank which is headquartered in Los Angeles and which is the third largest agriculture lender among commercial banks in the country. I sit on the agricultural loan committee which is a policy-setting committee of senior management lending to agriculture in our State and the rest of the country.

It is my job to keep them informed of production conditions affecting our credits.

The chamber is very aware of the importance of agriculture in California. I think most of the rest of the country is aware of that now, thanks to the Mediterranean fruit fly.

Agriculture is very large. It was nearly $14 billion last year in gross returns in our State. When you take into account all the other business that generates and transportation, sales, employment, and so forth, if you multiply that by four it accounts for nearly $55 billion in our State. That is about one-fifth of our State's economy.

The chamber is very aware of the intertwining of agriculture throughout the whole industrial sector of California. That is why I am here today.

The chamber has developed some guidelines that they measure any proposed reclamation reform legislation against and Senator McClure's bill, S. 1867, measures up very well. It goes a long way to establish a reasonable limitation on ownership.

As Senator McClure so aptly noted, people are not farming with a horse-drawn plow any more.

The bill also allows the flexibility of setting any farm size that is economically feasible and viable to meet market forces, allowing people to lease as many acres as they need to spread out the costs of additional expensive equipment to take advantage of economies of scale.

The bill also does not impose limitations where there is no subsidy, in the cases of people who are either paying full cost or have paid out.

It also exempts Corps of Engineers' projects, which it should, since those projects were built primarily for flood control and not irrigation.

Senator McClure's bill also validates written agreements made on behalf of the U.S. Government. As a banker I can certainly appreciate that because I am held to my written word as well. The Government should be no different.

Senator McClure's bill also clarifies the intent of Congress not to require residency as it so did through the Omnibus Adjustment Act of 1926.

One area where the chamber does have disagreement with Senator McClure's proposed bill is the qualified recipient clause.

The chamber feels that individuals should not be treated any differently than any other individual simply because they act in concert with others as part of a corporation. The proposed legislation goes a long way in resolving the controversy since 1977.

We feel it is imperative that something be done soon to pass reasonable reclamation reform legislation.

Candidly, I have to say to the committee that I discussed my coming to Washington with the chamber and asked what impact I may have. I frankly do not expect to shed any new light. You have many more witnesses here that are closer to the issue.

The chamber and I agreed it was important that an organization such as the L.A. chamber make an appearance to indicate it is more than just agriculture itself that is threatened. It is the whole economy of a State like California and that an organization such as the L.A. chamber with many diverse interests throughout the industrial sector is interested in seeing reasonable reclamation reform legislation passed.

Thank you.

[The prepared statement of Mr. Crowder follows:]

TESTIMONY BEFORE THE
SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

BY VERNON M. CROWDER

FOR THE

LOS ANGELES AREA CHAMBER OF COMMERCE

WASHINGTON, D.C.

December 10 - 11, 1981

I am Vernon Crowder, representing today the 3,500 member firms of the Los Angeles Area Chamber of Commerce in five counties of Southern California. I am also an Assistant Vice President in the Public Affairs/ Research Department of Security Pacific National Bank, headquartered in Los Angeles.

I am here today to support passage of S. 1867 now before you. This is an important step forward in the cause of modernizing the Reclamation Act of 1902. Reform legislation is particularly important to California, which is the number one agricultural state in the nation. We must emphasize that California agriculture has developed particularly efficient, large-scale agricultural practices well suited to this state, especially in areas where small-scale farming mandated by the antiquated 160-acre limit is not economically feasible. To jeopardize the productivity of our large farms would threaten the economic stability not only of our state, but also of the nation.

Farm products are the third greatest contributor (after defense and electronic technology) to our export market, and play a key role in mitigating our serious balance of payments situation.

One agricultural official in Los Angeles County projects that the gross returns - $13.7 billion in 1980 - to our state's growers is multiplied at least four times - to nearly $55 billion - in returns and jobs in transportation, sales, supplies and dozens of other industries dependent on agriculture. Keeping California's agricultural industry healthy has obviously important implications for our urban area.

We have established some guidelines against which we measure any proposed reclamation law reform legislation. We feel that S. 1867 measures up very well. These guidelines are:

1. Establish a reasonable ownership limitation in place of the current 160 acres, which does not allow for a viable farming unit in our modern economy.
2. No limitation should be placed on farm size by extending the acreage limitation to leased land. To do so is to openly refute one of the basic principles which has been the backbone of our country's prosperity -- individual initiative to grow and prosper. The farmer -- not the government -- is the only one who can determine what size farm is economically feasible. Leases, however, should be for a reasonable length of time and should reflect the value of the project in the rental received by the landowner.
3. Impose limits only where subsidized water is being supplied by the federal government. Methods should be devised whereby the subsidy is eliminated and government imposed limits cease. This can be accomplished by reimbursement of project costs attributable to a landholding or by charging "full cost," including imputed interest, for water deliveries.
4. Exempt U.S. Army Corps of Engineers projects from the application of reclamation law unless such projects have been specifically designated by Congress to be part of a reclamation project.
5. Validate all previous written representations made on behalf of

the United States under the federal reclamation law and upon which landowners have relied in the past, such as the Imperial Valley exemption. Agreements made on the basis of historic interpretation of reclamation law of 50 to 75 years standing should be honored on that basis and not be subject to retroactive cancellation.

6. Clarify the intent of Congress when it repealed the residency requirement through the Omnibus Adjustment Act of 1926. It is unworkable in the 1980s and is manifestly unfair to retired owners and detrimental to family owned farming businesses.
7. In one area we would change S. 1867 to sustain the current status of the law by not including the "qualified recipient" language proposed by the 96th Congress and the Carter Administration. It is our opinion that there should be no restriction of entities receiving water from a reclamation project, and there is certainly no basis for refusing land ownership and delivery of water to any entity benefiting more than 25 persons.

It is imperative that federal reclamation law be clarified and brought up to date. The economic and other benefits Californians currently enjoy and share with the rest of the country may not continue unless we are able to maintain the increasing productivity that is one product of efficient farm size.

Thank you for the opportunity to present our views. I am available to answer any questions.

Senator NICKLES. Thank you, Mr. Crowder.

Mr. Stokes and Mr. Crowder, you mentioned some reservations about the qualified recipient requirement. There was mentioned not wanting to see a monopolistic type of situation occurring.

Are you afraid if we open it up too much it would?

Mr. STOKES. No. We did want to overlook that point when we made our recommendations.

Senator NICKLES. Under Senator McClure's bill, you are suggesting changes in what regard?

Mr. STOKES. That we think it is necessary to limit the definition of "qualified recipient" to exclude the last part of the definition which would limit it to 25 people or less.

Senator NICKLES. That is basically the same that Mr. Crowder alluded to, not wanting to have a corporation limited to 25 individuals?

Mr. CROWDER. It is the chamber's opinion that there is no need for the clause at all. It was a proposal on the part of the Carter administration in the 96th Congress that wished to penalize people that put their investment in a corporation. We feel those individuals should not be treated any differently than any other individuals.

The chamber recommends no qualified recipient clause at all.

Senator NICKLES. Mr. Stokes, your statement basically was you believe there should be no limitation on the acreage amount?

Mr. STOKES. That is the ultimate goal. We think in due course it should be on a self-sustaining basis and people should pay for their service and there should be no limit on the acreage.

Senator NICKLES. No limit on the acreage but also with payment of full costs?

Mr. STOKES. That would be the ultimate objective; yes.

Senator NICKLES. Gentlemen, I have no further questions.

Senator Domenici, do you have any questions?

Senator DOMENICI. I have no questions. Thank you.

Senator NICKLES. Gentlemen, thank you very much.

Our next witness will be Secretary Watt, who is returning to answer some questions for Senator Domenici.

Senator DOMENICI. Chairman McClure and I had a dialog before you came and I indicated I might have a question of the Secretary. In the meantime I have found my questions are more appropriately answered by the Commissioner.

Senator NICKLES. Please go ahead.

Senator DOMENICI. Commissioner, I have a letter dated June 19, 1979, from the previous Secretary of the Interior, Cecil Andrus, to Senator Henry Jackson. There is a paragraph with reference to Elephant Butte, an irrigation district in my State, which says that the repayment obligation of the Elephant Butte Irrigation District under its repayment contract with the United States dated November 9, 1937, was $5,698,000. Repayment of this obligation to the United States was completed in September 1971. This contract represented the remaining balance of the repayment obligation at the date of the contract for the delivery of water for agricultural use; therefore, it is our opinion that Elephant Butte District has completely paid its repayment obligation to the United States.

Pursuant thereto, the Secretary issued a Department of Interior certificate of payment which is of record in the relevant deed recording institutions in New Mexico.

I ask if you have confirmed that is the case, and is it therefore exempt because it has repaid and meets the other criteria of the law?

Mr. BROADBENT. Yes, it is, Senator Domenici. It is the opinion of this administration that Elephant Butte has paid out, it has paid its commitment and would be exempt as long as the provisions that are in the present act remain.

Senator DOMENICI. I would ask that the letter I made reference to and the certificate of payment be made a part of the record, Mr. Chairman.

Senator NICKLES. It is so ordered.

[The documents referred to follow:]

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 19 1979

Honorable Henry M. Jackson
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This will respond to your May 30, 1979, letter requesting information on the application to the Elephant Butte Irrigation District of the provisions of S. 14 that would grant relief from acreage limitations and residency requirement of Federal reclamation laws upon completion of the repayment required under a contract with the United States. The specific question asked is: ". . . would the Elephant Butte Irrigation District be considered to have completed 'repayment required by the terms of any contracts with the Secretary relating to the delivery of water supplies to such landholding for agricultural use'?"

The provision in question in S. 14, as currently drafted, provides that:

> The acreage limitation provision and residency requirement of the Federal Reclamation Law shall cease to apply to any landholding upon completion of the repayment required by the terms of any contracts with the Secretary relating to the delivery of water supplies to such landholding for agricultural use.

The repayment obligation of the Elephant Butte Irrigation District under its repayment contract with the United States dated November 9, 1937, was $5,698,012. Repayment of this obligation to the United States by the district was completed in September 1971. This contract obligation represented the remaining balance of the repayment obligation of the district at the date of the contract for the delivery of water supplies for agricultural use; therefore, in our opinion, the Elephant Butte District has completely paid its repayment obligation to the United States.

We note an important difference between the provision cited above and similar provisions contained in other bills on the same subject. The exemption provision in S. 14 allows an exemption simply upon payout of charges according to contract terms, but is not dependent upon the repayment contract having a so-called "payout" provision which specifically provides for cessation of regulation upon full payment of construction charges. Most of the other proposed exemption provisions we have dealt with so far called only for the validation of these payout articles.

The problem with Elephant Butte is that payout clauses are contained in some individual recordable contracts, but not in the District contract. An exemption based on the individual recordable contracts containing payout provisions would not cover all of the land in the district, and would create a "checkerboard" effect of exempt and non-exempt lands in the district.

The S. 14 provision would seem to solve the "checkerboard" problem in Elephant Butte and would exempt all of the district's lands.

Parenthetically, you should be aware that the S. 14 provision does not appear to exempt Elephant Butte's sister district, El Paso Water Irrigation District. While El Paso has the same form of individual recordable contracts which could be validated, it has not completed "repayment required by the terms of any contracts with the Secretary relating to the delivery of water supplies to such landholding for agricultural use," (emphasis added) because the district (as well as all of its landholders by joint obligation) has not paid out a $7 million rehabilitation and betterment loan which is scheduled by contract for repayment. A fair interpretation of S. 14, one we prefer, is to require repayment of that rehabilitation and betterment loan prior to an exemption being granted.

You should also note that, even after construction or other capital charges have been paid out, many districts must still pay an annual operation and maintenance charge. We don't think Congress intends to continue regulation if the only costs remaining are annual operation and maintenance costs. If so, S. 14 should be revised to make it clear that regulation ceases if the district's only remaining contractual obligation is to pay annual operation and maintenance costs. We also believe, however, as noted in the preceding paragraph, that it may be the intent of Congress to cease regulation only if all construction and capital type costs, regardless of whether they be construction charges under the main repayment contract or loan repayments under other contracts such as rehabilitation and betterment contracts, distribution and drainage contracts or the like, have been repaid. If so, the legislation should be clear on that point as well.

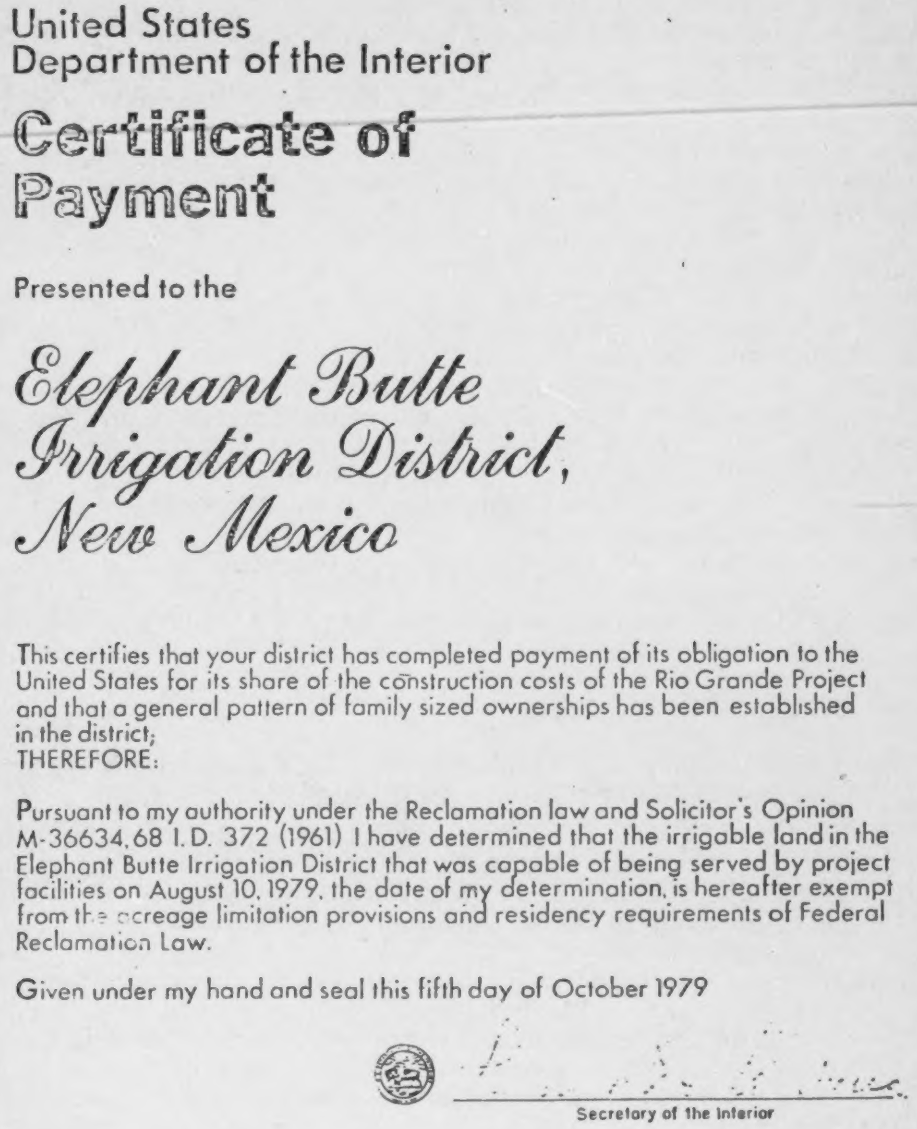
As you know, this Department has opposed previous legislative proposals which would automatically exempt districts from acreage limitations and residency upon repayment. We are concerned particularly about payment over the full term of contracts and about provisions which would allow early "buyout" from acreage limitations, since these would avoid achieving program purposes, such as initial breakup of excess lands and providing new opportunities for small farmers; also such provisions would inure only to the benefit of the few wealthy districts, who could afford "buyout", and would discriminate against the less wealthy majority of districts who could not afford it. We also question the inclusion of the residency requirement in the exemption. We believe it is very important, if some sort of payout exemption is provided, to tailor the provision so inequitable district exemptions, and an inequitable bias in favor of wealthy districts, do not result.

Finally, as your Committee approaches markup of S. 14, we urge your attention to adopting reasonable limitations on acreage, on leasing, on corporate, non-resident, and investor-type ownerships, and such other reasonable controls so that the program can achieve its purposes and does not present the opportunity to develop into a special Federal subsidy for a privileged and wealthy few among the nation's farmers. We would be pleased to talk to you, your colleagues, and your staff at any time about these issues.

Sincerely,

(SGD) CECIL D. ANDRUS

SECRETARY



United States
Department of the Interior

Certificate of Payment

Presented to the

Elephant Butte Irrigation District, New Mexico

This certifies that your district has completed payment of its obligation to the United States for its share of the construction costs of the Rio Grande Project and that a general pattern of family sized ownerships has been established in the district;
THEREFORE:

Pursuant to my authority under the Reclamation law and Solicitor's Opinion M-36634, 68 I. D. 372 (1961) I have determined that the irrigable land in the Elephant Butte Irrigation District that was capable of being served by project facilities on August 10, 1979, the date of my determination, is hereafter exempt from the acreage limitation provisions and residency requirements of Federal Reclamation Law.

Given under my hand and seal this fifth day of October 1979

Secretary of the Interior

Senator **Domenici**. What are your views on the qualified recipient language contained in the McClure bill?

Mr. **Broadbent**. Senator Domenici, yesterday Secretary Watt in response to a question at the House committee indicated this administration prefers and supports the language in the Lujan bill and would prefer that language be substituted for the qualified recipient language in the McClure bill.

Senator **Domenici**. Do you know the basic difference?

Mr. **Broadbent**. The basic difference is there is no qualification for corporate ownership in the Lujan bill.

Senator **Domenici**. Thank you. I have no further questions.

Senator **Nickles**. Thank you. I think that addresses some of the questions raised by our previous panel.

Mr. **Broadbent**. Thank you, Mr. Chairman.

Senator **Nickles**. Thank you, Commissioner.

Our next panel is Jo Brunner, national water chairman, Women Involved in Farm Economics, and Montana State water chairman; Jim Miller, assistant legislative director, National Grange, from Washington, D.C.; and Oscar Field, who is president of Idaho Farm Bureau, representing the American Farm Bureau.

Mr. Dressler is not with us. We also have Mary Burke, National Cattlemen's Association.

Ladies and gentlemen, we welcome you and are pleased you have traveled from afar in some cases to give us your input on this legislation.

Mrs. Brunner, you may begin.

STATEMENT OF JO BRUNNER, WATER CHAIRMAN, WOMEN INVOLVED IN FARM ECONOMICS

Mrs. **Brunner**. Thank you, Mr. Chairman and members of the committee. I hope you will bear with my hoarse voice today.

My name is Jo Brunner and I am the elected water chairman for the Women Involved in Farm Economics and I represent that membership here today.

We appreciate the opportunity to speak before this committee. Many of our members have written testimony or have testified orally on this matter in the past and we are hopeful this will be the last time such a trip is necessary and that Congress will pass a bill this session beneficial to the majority of landowners on Federal reclamation projects.

We wish to express our concern that the farmer who has stayed in compliance and kept his farm intact will be forgotten between the so-called "big is better" and the "small is enough" factions of this problem.

W.I.F.E. is of the opinion that the majority of landowners on the Federal reclamation projects stand in the middle of this confrontation.

We want to keep our farms in our families. We want to keep our sons and daughters on our farms that we have owned and operated for three to four generations. We believe this should be possible without either the wife or the husband going off the farm into the job market, a situation deplorable both to us and the nonagricultural person whose job we take.

I have lived on the Greenfields Irrigation Project since I was 6 years old. My parents raised six children on 80 acres of leased land and when most of us were qrown, they purchased 160 acres of their own land.

My husband and I bought 160 acres on the bench when our six children were small and we raised them on that along with my husband's wages from the railroad and smelter, and when they were nearly grown we bought 80 acres more.

My youngest son and his wife own only 60 acres on the bench primarily because of the cost of available land and the availability of land.

It is assumed that eventually our son and his wife will own our land. Both my daughter and I work in the fields with our husbands. It will take more than both our farms combined to raise his family, just as it took more land to support my generation than it did to support the generation before that.

We are not marginal grade farmers. We are good farmers. We take care of the land. We try new methods of irrigation to conserve water and increase our productivity and we have counterparts throughout all projects and districts.

W.I.F.E. knows that because of the original purpose of the Reclamation Act there have to be rules and regulations. While we do not agree with the contention that we are subsidized or that we get welfare water, we acknowledge we are peculiar where our loans and grants are concerned and must be governed differently.

Consequently, while we believe that 160 acres owned per person is not enough to make a living on, we cannot approve an unlimited or excessive leasing provision that would allow huge blocks of land to go to one operator, even though he is within legal ownership.

Eventually our young people who want to farm and who are good farmers will not be able to find the land they need to raise their families when that land comes to market.

Women Involved in Farm Economics believes that all landowners on Federal irrigation projects should live by rules pertinent to all landowners. We cannot support legislation that will exempt nonprofit organizations or religious groups from the rules the rest of us live by.

W.I.F.E. members are in total agreement with a nonresidency clause. We believe that when a farmer retires he should be able to do as he wishes with his land and we believe if those of us in the North would like to go South, we should be able to do so.

To us equivalency is a necessity. Projects to the north and northwest have shorter climates; colder climates, our soils are heavier. We are lucky in our district if we do not have a killer frost in June and one again in the last of August.

Another concern of W.I.F.E. is the proposal to allow several ways of operating within the individual projects. We recognize that once a district project has paid off its indebtedness, they should not have to live with the restrictions and we recognize the tremendous cost of paying off all costs for those who wish to do so would be prohibitive to most of us and it would not be so for many others and it is feasible then for a comparative few owners to control project lands.

Mr. Chairman and members of the committee, it is the desire of the Women Involved in Farm Economics to preserve the family farm. I would like to reiterate the guidelines we feel necessary to do so where Federal irrigation or reclamation projects are concerned.

One, we support a viable farm unit. While 160 acres per person is too small, we cannot support legislation that would allow a small ownership and unlimited leasing or legislation that would allow a very large ownership and leasing.

We support a nonresidency clause.

We support class I equivalency.

We support the value of irrigation construction and improvements at the project level to be included in any excess land sold.

We oppose special rules for nonprofit and religious organizations.

We believe that any projects and districts paying off their indebtedness must be released from the previous obligations.

We sincerely request that the changes made in the Reclamation Act be beneficial to the majority of landowners on the Federal reclamation projects.

We respectively submit that the time between the original Reclamation Act of 1902 and except for minor changes the present attempt to update that law has been too long. We are the only segment of our economy forced to live with laws nearly 80 years old and we do not want that to happen again.

To insure fair and equitable treatment for our people, we request that a cost of living study be implemented no more frequently than every 10 years and no longer than 15 years between studies. We request that those immediately involved, the residents of the projects, participate in such a procedure.

Thank you very much.

[The prepared statement of Mrs. Brunner follows:]

WIFE Women Involved In Farm Economics

STATEMENT
JO BRUNNER
WOMEN INVOLVED IN FARM ECONOMICS
HR 4265
WASHINGTON, D.C.
DECEMBER 9, 1981

"Hell has no fury like a woman scorned"

Mr. Chairman, members of the committee, my name is Jo Brunner. I am the elected water chairman for the Women Involved in Farm Economics organization. I represent that membership today.

We appreciate the opportunity to speak before this committee and tell you once more of W.I.F.E.s concern for our members, and all other farmers who are effected by any legislation passed concerning a Federal Reclamation Act.

Many of our members have entered written testimony or testified orally on a local level on this matter in the past. I testified at the Billings, Montana hearing four years ago and again at regional hearing in Sacremento almost two years ago. We are hopeful this will be the last time such a trip is necessary and that Congress will pass a bill this session beneficial to the majority of landowners on Federal Reclamation Projects.

We wish to express our concern that the farmer who has stayed in compliance and kept his farm intact will be forgotten in the shuffle between the so-called "big is better" and the "small is enough" factions of this problem.

The Sacremento hearing was dominated by those whose interests were similair in their requests for the 160 acre ownerhsip, but who then parted company with one faction requesting unlimited leasing, and the other preferring 160 acres and less, including leasing, per family unit.

W.I.F.E. is of the opinion that the majority of the landowners on the Federal Irrigation Projects stand in the middle of this confrontation! We want to keep our farms in our families; we want our sons and daughters to keep the lands we've owned and operated for three and four generations intact. AND we want them to be able to make a living and raise their families on that land. We believe this should be possible without either the wife or husband going off the farm and into the jobmarket--a situation deploreable not only to us, but to the non-agriculture person whose job we take. We recognize that additional acreage alone will not allow us this opportunity. We also need cost of production for our products, but additional acreage will often be the factor that will keep us alive.

I have lived on the Greenfields Irrigation Project since I was six years old. My parents raised six children on 80 acres of leased land. When most of us were grown, they purchased 160 acres of their own land.

My husband and I bought 160 acres on the bench when our six children were small and we mised them on that, along with my husbands wages from the railroad and the smelter, and when they were nearly all grown we bought 80 acres more.

Our youngest son and his wife own only 60 acres on the bench, primarily because the cost of available land is prohibitive. It is assumed that eventually, they will farm our acreage. Between our two families, we own and lease close to 800 acres. It is not enough for four adults and one tiny little baby girl to live on. My son works in construction during off-season months and his wife worked off the farm before the baby was born. Both she and I work in the fields.

It will take more than we have combined to raise his family, just as it took more land to support my generation than it did to support the generation before. We are not marginal-grade farmers! We are good farmers; we take care of the land; we try new methods of irrigation to conserve water and increase our productivity. Our situation is not unique. We have counterparts through-out all projects and districts.

Yet, we know that because of the original purpose of the Reclamation Act, to put people and water on the land, there has to be rules and regulations. While we do not agree with the contention that we are subsidized, we acknowledge that we are peculair where our loans and grants are concerned, and must then be governed differently.

Consequently, while we believe that 160 acres, owned, per person is not enough for us to make a living on, we cannot approve an unlimited, or excessive leasing provision that would allow huge blocks of land to go to one owner, even though he was within legal ownership. We hold that it makes no difference who cuts your throat--the government; land specualtors; investors; conglomerate corporations or your neighbor---when your dead, you are dead! And if any of the previous can come into our projects with much higher rent per acre to the older couple who must retire, or the younger person who is forced out of farming because of ill health---eventually our young people who want to farm, and who are good farmers, will not be able to find the land they need to raise their families when that land comes on the market. We are concerned with our rural communities and small towns. They are a necessary ingredient to us, yet we have seen them die out completely when large corporations brought in the necessities to work the land that kept our local businesses and industries alive.

Women Involved in Farm Economics believes that all landowners on Federal Irrigation Projects should live by rules pertinent to all landowners. We cannot support legislation that will exempt non-profit organizations or religious groups from the rules the rest of us live by.

While we believe that the limit of ten years for the disposal of excess land after a recordable contract is executed is more than generous, we recognize the Secretary of the Interiors judgement on this matter. We certainly approve the decision in both the House and Senate bills to allow such land to be sold complete with the value the irrigation brings to the land.

W.I.F.E. members are in total agreement with a non-residency clause. We beleive that when a farmer retires, he should be able to do as he wishes with his land; if he has proven up on a homestead or paid for his land, he should have the right to lease that land, if he desires, to his family or neighbor, thus ensuring an income for his retirement years and a continuance of the land to his heirs.

Equivlancy is a necessity. Projects to the north and northwest do not have the projuction capabilities of those in the south and southwest. Our growing seasons are shorter, our climates colder and for a great part, our soils heavier. On our project we feel lucky if we do not have a killer frost in June and one again in August.

Another concern of W.I.F.E. is the proposal to allow several ways of operating within the individual projects. We recognize that once a district or project has paid their indebtedness, they should not have to live with the restrictions of the program. And we recognize that the tremendous cost of paying off all costs, for those who wish to do so, would be prohibitive to most of us, it would not be so for many others and it is feasible then for a comparative few owners to control project lands.

While we do not contest the right to stay small, if so desired, we are concerned with the financial impact to a project, of going several ways on ownership and leasing within an individual project. And, again, while we do not protest the westwide concept of owning land in different projects, we are concerned with the tremendous cost and the time needed to implemant such programs at the project levels. We know that we will pay for such costs in our taxes.

Mr. Chairman, members of the committee, it is the desire of the Women Involved in Farm Economics organization to preserve the family farm. I would like to reiterate the guidelines we feel necessary to do so where Federal Irrigation or Reclamation Projects are concerned.

No.1.-we support a viable farm unit. While 160 acres per person is to small, we cannot support legislation that would allow a small ownership and unlimited leasing, or legislation that would allow a very large ownership and leasing.

No.2.-We support a non-residency clause.

No.3.-We support class one equivilancy in any proposals adopted.

No.4. We support thevalue of irrigation construction and improvements at the project level be included in any excess land sold.

No.5.-We oppose special rules for non-profit and/or religious organizations.

No.6.-We believe than any projects and districts paying off their indebtedness must be released from the previous obligations.

No.7.We sincerely request that the changes made in the Reclamation Act be beneficial to the majority of landowners on the Federal Reclamation Projects, and not to a special minority.

No.8.We respectively submit that the time between the original Reclamation Act of 1902, and except for minor changes, the present attempt to update that law, has been too long. We are the only segment of our economy forced to live with laws nearly 80 years old, and we do not want that to happen again. To ensure fair and equitable treatment for our people, we request that a cost of living study be implemented no oftener than every ten years and no longer than 15 years between studdies. We request that those immediately involved--residents of the Projects, participate in such procedure.

Thank you.

Senator NICKLES. Thank you, Mrs. Brunner.
Jim Miller.

STATEMENT OF JIM MILLER, ASSISTANT LEGISLATIVE DIRECTOR, THE NATIONAL GRANGE

Mr. MILLER. Thank you, Mr. Chairman.

My name is Jim Miller and I am with the National Grange. The National Grange is the oldest farm group in the country. We have a long and proud history and have always been in advocacy of the family farmer.

The Grange believes there are two basic issues here and those issues we are certain will be the basis upon which the law is determined.

I am here to emphasize that those two issues will certainly be the issues upon which the outcome of this law will be perceived.

Those are reasonableness and equity.

The Grange without a doubt recognizes that the 1902 act does need to be updated. We cannot support the Senate bill on the basis that we believe the acreage limitations are set too high.

The Grange policy that I an here to advocate was adopted in 1979 and it does not state an acreage figure. We recognize that is going to be a decision that is going to be made in the political arena.

We are certain that a 1,600-acre ownership is set too high. We would also in the same vein urge that a cap be placed on the allowable acreage to be leased.

I wish I could be more specific and give you absolute numbers. I cannot do that. I would be more than happy to provide any information at a later time on reaction to those figures.

We also believe residency provisions are appropriate in reclamation law, with a few exceptions made for retired farmers, widowed spouses, those unable to continue farming. We think the inclusion of a residency clause would insure that the benefits of publicly supported irrigation water would in fact be distributed among those widely and maintain effective competition among farmers.

I would like to urge that Corps projects be excluded on a case-by-case basis. I believe there are Corps projects that do need to fall under the provisions of the Reclamation Act and there are those that should not. This is an issue that needs to be decided on a case-by-case basis.

We would also oppose a blanket exemption for nonprofit and trust agencies. There is too much potential for abuse.

An acreage equivalency, class equivalency clause is appropriate. We would certainly support that.

I believe those issues of equity and fairness will come back when Congress reviews new project authorization. I believe reclamation law has done much to benefit this country and our phenomenal agricultural success is proof enough.

We need more project authorizations and we will continue to actively support water development projects. The public perception of these water development projects must be a positive one and all too often it has not.

Anything that this committee and the Senate and the Congress can do to further increase the acceptance of water development projects, I believe is in the Nation's best interest.

Thank you.

[The prepared statement of Mr. Miller follows:]

THE NATIONAL GRANGE

STATEMENT OF JIM MILLER
ASST. LEGISLATIVE DIRECTOR
THE NATIONAL GRANGE

Before the
COMMITTEE ON ENERGY AND NATURAL RESOURCES
U.S. SENATE

DECEMBER 10, 1981

Re: Reform of the 1902 Reclamation Act

Family Farm Organization Serving Rural America

THE NATIONAL GRANGE, 1616 H STREET, N.W. WASHINGTON, D.C. 20006

December 10, 1981

Senator James McClure, Chairman
Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20510

Mr. Chairman and Members of the Committee:

I am Jim Miller, Assistant Legislative Director of the National Grange, 1616 H Street, N.W., Washington, D.C. 20006. The National Grange, representing 450,000 members nationwide, is honored to submit its views on S.1867, a bill to modernize the 1902 Reclamation Act.

The Grange has traditionally valued and championed family agriculture, and has consistently recognized the need for responsible development of our nation's water resources. We are steadfast in our commitment to provide a voice for smaller-scale agricultural producers and to challenge any threat to the viability of owner-operated production units.

In 1979, at our annual meeting in Denver, Colorado, delegates to the National Grange adopted a policy that reflects this commitment to family farming as it concerns reform of the 1902 Reclamation Act. This policy delineates six criteria which must be met to assure that the intent of the 1902 Act is maintained:

1. To provide opportunity for a maximum number of farmers on the land.
2. To distribute widely the benefits from publically supported reclamation because of government interest-free money and low-priced water are involved.

3. Promote and preserve the concept of the family-sized, owner-operated farm.

4. To preclude the accrual of speculative gain in the disposition of land.

5. To permit owners of excess lands to dispose of their lands to an eligible buyer of their choice, giving preference to

    a) immediate family members,
    b) tenants and/or employees, and
    c) neighbors.

6. To require the landowner to reside within 50 miles of the land owned, with the exception in residency for widowed spouses, retired farmers, hardship conditions, and in the case of inheritance.

Mr. Chairman, the National Grange commends your efforts in initiating discussion on this important topic. We cannot, however, support S.1867 because it meets only one requirement of our policy, that being point 5 regarding land disposition. We are convinced that the acreage limitations are unjustly high, based on any available figures of average family farm size. Combined ownership and leasing of 3200 acres would benefit so few landowners that it jeopardizes the legitimacy and the future of publically supported reclamation projects.

Basic principles of equity are at stake in this legislation. Sound reclamation policy would allow the widest possible distribution of publically supported benefits. We not only oppose the high acreage limitation on ownership, but we must insist that a limit be placed on the amount of land that an individual may lease within one irrigation district. Without such a limit, the legislation simply reduces, not eliminates, the subsidization of excess irrigated lands.

The Grange believes that a residency requirement is justified in reclamation law. By requiring a reasonable radius for ownership, two objectives will be served. First, we would be assured that only family-sized farmers would benefit from public expenditures. Secondly, a residency requirement would nearly eliminate the ability of speculators to further drive up the costs of farmland. Beginning farmers already find it nearly impossible to purchase land at current costs.

Finally, we believe that a blanket exemption of U.S. Army Corps of Engineer projects is unwarranted. Corps exemptions to the acreage limitation should be made on a case-by-case basis. While the sponsors of the projects may be different agencies, in many instances the effects adn the principles to be applied are the same.

Mr. Chairman, the National Grange shares your hope that this sensitive issue can be resolved during this session of Congress. We firmly believe a compromise position, one that addresses the concerns in our policy, is necessary for the continued viability of family agriculture. Tighter acreage limitations, capped acreages for leased land, a residency requirement, and limited exemption of U.S. Army Corps of Engineer projects are all necessary elements to reclamation reform. The Grange is eager to work with the Congress in this vital area of water policy.

Senator NICKLES. Thank you.

Mr. Field?

STATEMENT OF OSCAR FIELD, PRESIDENT, IDAHO FARM BUREAU FEDERATION ON BEHALF OF THE AMERICAN FARM BUREAU FEDERATION

Mr. FIELD. Thank you, Mr. Chairman.

I am a full-time rancher in Idaho and president of the Idaho Farm Bureau and a member of the American Farm Bureau Board.

I would like to thank you for the opportunity to present the views of the farm bureau concerning reclamation law reform legislation.

We would also express our thanks to you for getting this important issue back into the mainstream of legislative consideration.

The farm bureau is the Nation's largest general farm organization with over 3 million member families in 48 States and Puerto Rico. Our members represent about 75 percent of the commercial farms and ranch operations in the country, producing virtually every type of agricultural commodity grown commercially in the United States.

The farm bureau policies are developed through study, discussions, and decisions by majority vote at local, State, and national levels. 0ur policies on reclamation law reform are as follows.

The technology of modern agriculture has made limitations on amounts of water made available through Federal projects both impractical and uneconomic.

We specifically support repeal of the provisions of the existing Reclamation Act of 1902 which relate to acreage limitations. We further object to residency regulations, leasing provisions, direct ownership restrictions, and use of a lottery or other impractical means of distributing excess lands.

We support repeal of the acreage limitation and residency requirement as the most sensible approach to today's problems with reclamation law. Repeal is the simple and complete solution to problems with this outdated law.

Repeal would be the most cost-effective approach for the Federal Government. There would be no need for an enormous amount of man hours and dollars to develop, adopt, and enforce a set of complex administrative rules and regulations.

Legislation to repeal the acreage limitation and residency requirements of the reclamation law has been introduced in the House but not in the Senate. Although legislation is similar, H.R. 160 has not been introduced in the Senate. We urge the committee to include repeal in its consideration of reclamation law reform.

There can be no doubt that the acreage limitation and the residency requirements are now outmoded and unreasonable. The arguments of those who favor their retention are based largely on social philosophy. They speak of extending the opportunity to farm and of limiting subsidies.

The farm bureau is as eager as anyone for individuals to have the opportunity to farm. The answer does not lie in redistribution of land or limiting the farm size. The real answer lies in economic and regulatory reform.

The farm bureau is pleased with the actions of the administration and the Congress in reducing Federal taxes and spending coupled with less Federal regulation, which are designed to get at the heart of inflation and declining productivity problems.

As for the subsidy issue; we find it difficult to distinguish the good from the bad by looking at the Federal track record.

With regard to S. 1867, we commend you for your efforts to develop legislation which would resolve the reclamation reform dilemma in a fair and equitable manner. We are supportive of its provisions to repeal the residency requirement and the several specific exemptions extended.

Our basic concern with S. 1867 is with the conditions of acreage ownership limitations beyond the point of initial qualification for reclamation benefits and with the inclusion of leasing as a federally regulated practice for the first time. Our concerns are with the inherent Federal limitation and regulation of farm size and agricultural practices.

Regarding reclamation law reform, we have heard much discussion about the appropriate farm size for today. We believe it is simply not possible for the Government to determine an appropriate farm size.

We have and we can continue to live with a reclamation law that limits the initial qualification for benefits to a specific number of acres of land owned. Thereafter, the lands must be freely available both in terms of transfer of ownership and/or leasing with the full reclamation benefit.

We believe this is consistent with the original intent and purpose of the law and would allow economic efficiency to determine farm sizes in reclamation projects as it does throughout American agriculture. Today's and tomorrow's farm production systems are dynamic. We want them to stay that way.

Thank you.

[The prepared statement of Mr. Field follows:]

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES WITH REGARD TO S. 1867, A BILL TO AMEND THE FEDERAL RECLAMATION LAW

Presented by
Oscar Field, President, Idaho Farm Bureau Federation, and
Member, AFBF Board of Directors

December 10, 1981

I am Oscar Field, President of the Idaho Farm Bureau, and a Member of the Board of Directors of the American Farm Bureau. I am a full-time farmer. I farm 1,000 acres near Grandview, Idaho, producing sugar beets, corn, small grains, alfalfa, and cattle. All of my land is irrigated with water from the Snake River. I do not, however, receive any water through a federal reclamation project.

We appreciate this opportunity to present the views of the Farm Bureau concerning Reclamation Law reform legislation. We would also express our thanks for your initiative in getting this important issue back into the mainstream of legislative consideration.

Farm Bureau is the nation's largest general farm organization with over 3 million member families in 48 states and Puerto Rico. Our members represent about 75 percent of the commercial farm and ranch operations in the country, producing virtually every type of agricultural commodity grown commercially in the United States.

Farm Bureau policies are developed through study, discussion, and decision by majority vote at local, state, and national levels. Our policy on Reclamation Law reform is as follows:

> "The technology of modern agriculture has made limitations on amounts of water made available through federal projects both impractical and uneconomic.
>
> "We specifically support repeal of the provisions of the existing Reclamation Act of 1902 which relate to acreage limitations. We further object to residency regulations, leasing provisions, direct lineage ownership restrictions, and use of a lottery or other inappropriate means as a method of disposal for excess lands."

We support repeal of the acreage limitation and residency requirement as the most sensible approach to today's problems with the Reclamation Law. Repeal is the simple and complete solution to problems with this outdated law.

Repeal would be the most cost-effective approach for the federal government. There would be no need for an enormous amount of manhours and dollars to develop, adopt, and enforce a set of complex administrative rules and regulations.

Legislation to repeal the acreage limitation and the residency requirement of the Reclamation Law has been introduced in the House, but not in the Senate. Although legislation similar to H.R. 160 has not been introduced in the Senate, we urge the Committee to include repeal in its consideration of Reclamation Law reform.

There can be no doubt that the acreage limitation and the residency requirement are now outmoded amd unreasonable. The arguments of those who favor their retention are based largely on social philosophy. They speak of extending the opportunity to farm and of limiting subsidies.

Farm Bureau is as eager as anyone for individuals to have the opportunity to farm. But the answer does not lie in redistribution of land or limiting farm sizes. The real answers lie in economic and regulatory reform. Farm Bureau is pleased with the actions of the Administration and the Congress in reducing federal taxes and spending, coupled with less federal regulations, which are designed to get at the heart of inflation and declining productivity problems.

As for the subsidy issue, we find it difficult to distinguish the good from the bad by looking at the federal track record. According to the latest report of the Water and Power Resources Service (now the Bureau of Reclamation, again), after 77 years the federal investment in completed project facilities totals $6.4 billion. This includes $1.4 billion in specific irrigation facilities, $1.1 billion in electric power facilities and $3.9 billion in multiple-purpose and other facilities. The 1979 Annual Report also states that about 84 percent of this total investment is reimbursable to the Federal Treasury.

Referencing the 1979 Annual Report of the Service, $6.4 billion worth of reclamation facilities served water to 21.7 million people. Of this total, 18.9 million were people receiving municipal and industrial water.

We believe the general public derives substantial benefits from reclamation. Food, fiber, and forage production totaled 56.2 million tons in 1979, valued at nearly $7 billion and enough to feed 37.2 million people. There are more than 60 million recreation visitor-days at project facilities. Flood control benefits were over $135 million.

In 19/6, it is estimated that $12.1 billion in net economic activity was attestable to reclamation. This generated $1.9 billion in federal taxes and nearly $1 billion in state and local taxes.

With regard to S. 1867, we commend you for your efforts to develop legislaton which would resolve the reclamation reform dilemma in a fair and equitable manner. We support its provisions to repeal the residency requirement and the several specific exemptions extended.

Our basic concerns with S. 1867 are with the continuation of acreage ownership limitations beyond the point of initial qualification for reclamation benefits, and with the inclusion of leasing as a federally regulated practice for the first time. Our concerns are with the inherent federal limitation and regulation of farm sizes and agricultural practices.

Regarding Reclamation Law reform, we have heard much discussion about the appropriate size farm for today. We believe it is simply not possible for the government to ever determine an appropriate size farm.

We have, and we can continue to live with, a Reclamaton Law that limits the initial qualification for benefits to a specific number of acres of land owned. Thereafter, however, the lands must be freely available both in terms of transfer of ownership and/or leasing, with the full reclamation benefit. We believe this is consistent with the original intent and purpose of the law, and would allow economic efficiency to determine farm sizes in reclamation projects as it does throughout American agriculture. Today's and tomorrow's farm production systems are dynamic. We want them to stay that way.

Senator **Nickles**. Thank you.
Mr. Dressler?

STATEMENT OF DONALD DRESSLER, EXECUTIVE VICE PRESIDENT, WESTERN GROWERS ASSOCIATION

Mr. **Dressler**. I am Don Dressler with Western Growers Association. We are a trade association representing fresh fruit and vegetable growers in California and Arizona.

Our primary concerns about the reclamation law and amendments can be stated in several different points.

They relate directly to the nature of the industry and producing fresh produce.

Our members in California and Arizona produce half of our Nation's fresh produce. To do that and to provide the customers and consumers of our country with a year-round supply of lettuce and other produce, we have to farm in a number of different areas.

It is common for our members in the lettuce industry to do business in the coastal regions of California in the summer and go to the San Joaquin Valley in the fall and to the Colorado River areas of Arizona and California in the winter and then to reverse that cycle and go back up through the State during the spring months.

Because of that we are particularly affected by a number of proposals on reclamation. One is residency because our members are farming in areas that may be literally over 1,000 miles apart.

A second area of concern to us is a control on leasing. The very nature of seasonable commodities which our members produce requires them to lease and restrictions on leasing size, whether it is 1,600 acres or 3,200 acres or whatever, we feel is inappropriate and not necessary and violates the original concept of the Reclamation Act which was aimed at ownership.

Certainly as far as our members are concerned, leasing is not an alternative to ownership or an alternative way of owning land which some people in proposing amendments to the reclamation law have considered.

They have looked at a combination of owned and leased and thought they were the same thing. In the fresh produce business, that is not so. We are very adversely affected by limitations on leaseholding size.

We urge that whatever proposals come forward from the Senate have free leasing, no acreage restrictions on leasing size.

We are willing to accept some kind of ownership size restrictions. Our members have built their businesses over the last 50 or 60 years by relying on the current nature of reclamation law, which means district-by-district individual ownership restrictions.

We have a number of families that have been in our business for a number of years. They have been able in some cases to keep their family members in the business.

One of the proposals in the current Senate bill would treat corporations with 25 shareholders differently than other corporations. We have family corporations where every shareholder is a member of the family and we have more than 25 shareholders.

We think that an artificial restriction to treat their corporations differently than others is unfair and unreasonable. We think that a corporation under the reclamation law has always been treated in a certain manner and there is no reason to change in the 1980's.

Obviously we feel the time has come to recognize that there is a point when projects have been paid off and when reclamation restrictions should cease.

The Corps of Engineers' projects that were not constructed as part of the reclamation system when the enabling statutes were passed should not be restricted by acreage limitations.

We share the view of many of the other speakers about honoring commitments that the Bureau of Reclamation and the U.S. Government have made to farmers over the years and providing a way to validate those commitments so that our nembers can trust in the decisions they have made in the past when relying on Government promises.

These are some of the key points we are concerned about.

[The prepared statement of Mr. Dressler follows:]

STATEMENT OF THE
WESTERN GROWERS ASSOCIATION

BEFORE THE
SENATE COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS

Western Growers Association
P.O. Box 2130
Newport Beach, California

December 10, 1981

STATEMENT OF
WESTERN GROWERS ASSOCIATION

Good morning Mr. Chairman and members of this Committee. My name is Donald Dressler. I am the Executive Vice-President of the Western Growers Association, an agricultural trade association whose 2000 California and Arizona members grow, pack and ship one half of the nation's fresh fruits and vegetables. The 1902 Reclamation Act, and the Department of Interior regulations adopted thereafter have a significant and direct impact on a large number of Western Growers Association's members.

Our members who grow and ship fresh produce in California and Arizona are in a unique situation. For our members to maintain a continuous supply of fresh perishable produce, provide continuity of employment, obtain economic utilization of their land and equipment, and provide adequate crop rotation, a unique growing and marketing system has evolved. Western produce growers must have constant crop production on a year round basis. For example, a fresh vegetable grower may be headquartered in Salinas because that area has the longest growing season. He may grow lettuce there for six months in the late spring, summer, and fall. During a transition time in the fall, he may obtain land and grow lettuce in the San Joaquin Valley for one to two months. Then, for the winter, he may move to one or more of the desert regions.

Another example exists with a melon producer who may grow melons in one of the several desert regions for two to three months, move to Bakersfield for a couple of months, and thereafter move up the valley; likewise, a desert based produce grower may be in his home area, which may spread over 200 miles, for six months, going to the Salinas Valley for three months and to Colorado and New Mexico for three months in order to maintain his continuity of fresh produce supply. Thus, our member's unique growing and marketing system has evolved. To that end, many WGA grower members are very mobile, following narrow bands of favorable climatic conditions wherever they exist to provide the best quality produce at a competitive cost on a year round basis.

Our typical member, if indeed there is one, may not own land in each area in which he farms. Instead, he may lease land in an area often for a single crop which in some instances is for as little as ninety days. To assure an adequate supply of fresh produce, therefore, it is important that our members retain the flexibility to farm in more than one area.

Equally important to our members is their ability to lease land without any restriction. Without flexibility in our operation, the growing and marketing of fresh produce would be seriously disrupted. Such disruptions could have a negative effect on the efficiency and economy of our members and the fresh produce business in the United States.

In recognition of the process that I have described above, the Western Growers Association Board of Directors has endorsed several basic concepts which they believe are appropriate amendments to the Reclamation Act of 1902:

1. Repeal of the residency requirement;

2. Establish individual rather than unit acreage entitlement;

3. Removal of all acreage restrictions for leasing project lands;

4. Increase the number of acres under single ownership eligible to receive project water at less than full cost;

5. Permit delivery of project water to farms of any size, provided that project water delivered to project lands in excess of any acreage minimums established by Congress be provided at a full cost rate developed under a reasonable full cost formula; and

6. Permit corporations and other legal entities to fully participate in the reclamation program.

In particular, these six concepts will provide WGA members with continued flexibility to grow and market their fresh fruits and vegetables.

In addition, our Board has also endorsed several concepts which it believes are necessary for a comprehensive overhaul of the Reclamation Act:

1. Exemption of Corp of Engineer projects from the Reclamation Act, unless such projects are by enabling statutes expressly made a part of a reclamation project;

2. Any acreage limitations, or other limitations of the Act, should cease upon full payment by the contracting entity of its agreed obligation;

3. Recordable contracts should be effective for ten years, and permit the seller to sell to buyers of his choice; and

4. Contracting agencies should have the right to amend their existing contracts to include the benefits of any new

law without new or additional conditions imposed by the Secretary of the Interior.

Virtually all of the concepts endorsed by WGA are embodied in S. 1867 recently introduced by Senator McClure and others, and Western Growers Association would, as of today, endorse most of the bill and the options available therein.

As you know, the bill would allow a contracting entity to remain under existing law, but would also permit unlimited leasing; it also provides a second option which would increase the ownership limit, and would limit leased land to an additional 1600 acres, unless a grower is willing to pay full cost for all water on leased lands in excess of the 1600 ownership base.

This plan would permit our members, and western agriculture in general, to achieve and maintain the vital flexibility and mobility they need to produce a continuous supply of fresh fruit and vegetables for national consumption.

In conclusion, Western Growers Association appreciates the prompt action of this committee in holding this timely hearing. We respectfully urge you to adopt amendments to the Reclamation Act of 1902 that reflect the efficiency and economic realities of modern agriculture.

Thank you.

Senator NICKLES. Thank you, Mr. Dressler.

Mary Burke representing the National Cattlemen's Association.

STATEMENT OF MARY BURKE, ON BEHALF OF THE NATIONAL CATTLEMEN'S ASSOCIATION

Ms. BURKE. Thank you, Mr. Chairman. It is a pleasure to be here. I represent the National Cattlemen's Association which is the recognized national spokesman for the Nation's beef industry, an industry which represents the largest segment of American agriculture.

We represent 280,000 professional cattlemen including individual members, members of 52 affiliated State cattle associations and 20 national breed organizations.

I am also in the cow business with my husband. We reside on a ranch, part of which is within a reclamation project in the central part of the State of Washington.

I appreciate our comments being submitted for inclusion into the record. I will briefly summarize some of our points.

The NCA would recommend that there be no residency requirements; recognition that 160 acres is not an adequate or efficient management landholding; at least a 10-year divestiture period; a workable definition of ownership.

I would agree with Mr. Dressler that there are some situations where family ownerships do include more than a certain number of persons.

The validation of existing contracts which appears in the McClure bill we would certainly support.

The NCA strongly supports legislation which would end the inequities and uncertainties now existing with the Bureau of Reclamation contracts with landowners. We would appreciate the Senate addressing this problem. There are a great many of our members and members of the other parts of the agricultural community who are very uncertain as to what they can do.

We feel landowners in the various States need to be assured of credibility and consistency from Congress and the Department of Interior particularly in the resolution of the acreage question so that we can get on with our management decisions to make long-term commitments; an equivalency provision on at least a project wide and not district basis because some districts may be very small, and with attention—as this bill provides—to latitude, weather, soils and topography.

We also would bring up the question of State court jurisdiction. The bills now before both Houses of Congress refer only to Federal district courts. There are a number of State adjudications being processed at this time and we feel we need recognition of those which certainly should be consistent with the present administration's policy of returning water authority to the States.

We have attached to our testimony Charles Howland's statement to a House subcommittee in 1980.

A definition of commingled waters which provides for existing water rights. I think it is apparent at least in the Northwest that all of the waters in our area are appropriated if not overappropriated. I would direct that comment to Senator Bumpers. I think he asked a very good question. Mrs. Parker also resides in the State of Washington.

We do have a great deal of difficulty with commingled waters there. There are prior water rights. There are water rights that are done for matter of efficiency with Bureau waters with which obviously no one has any objection but we do feel that needs to be addressed.

We also need the assurance of Congress and Interior with the definition of "acreage," that contractual waters will in fact be delivered. Acreage waters are computed on the basis that there are so many acre-feet that is accrued to each acre of land. We need to be sure if we are setting up an acreage definition that those waters will be delivered.

If you have 160 acres and only half your water is being delivered and the other half is being used for some other purpose, you have in fact only 80 acres of land. Perhaps that should be addressed somewhere in the equivalency question.

Section 107 of S. 1867 states that water from reclamation facilities may be used for water quality, irrigation, municipal or industrial purposes only to the extent covered by a contract requiring payment for the use of such water.

Does this mean storage water now being taken from landowners for which they are still assessed, or new purposes such as recreational uses in California and fish flows in the Yakima River in Washington, will these be required to have a payment contract?

A news release from the Yakima project manager is attached in which you will note that 70,000 feet are now being released from storage-only waters.

NCA would also appreciate some clarification or definition of terms. We have a question on "full cost." If there is a payout of the full cost, will this include the court costs and attorney fees which are now being assessed to landowners by the districts in order to protect their existing water rights and is that going to become a part of the full cost of payout in order to remove oneself from these requirements?

I think this is important both as a district question and to individual landowners.

In S. 1867, section 201(c) defines landholding as total irrigable acreage. We feel this more accurately should be stated as "acres for which water is contracted." Irrigable acres are acres which could be irrigable or are irrigable within projects which have no project water or which have water from another source.

In relationship to State water law, that is a little confusing.

In conclusion, we thank you for your attention in this matter. We recommend congressional action to resolve the many inequities inherent in existing law.

Thank you.

[The prepared statement of Ms. Burke follows:]

NATIONAL CATTLEMEN'S ASSOCIATION
P.O. Box 569 1001 Lincoln St.
Denver, Colorado 80201

STATEMENT

of the

NATIONAL CATTLEMEN'S ASSOCIATION

to the

Committee on Energy and Natural Resources

United States Senate

Concerning

Amendments to the 1902 Reclamation Act

Submitted by
Mary Burke, Chairman
Water Rights and Resources Subcommittee,
Private Lands and Water Committee

December 10, 1981

The National Cattlemen's Association is the national spokesman for all segments of the nation's beef cattle industry--including cattle breeders, producers, and feeders. The NCA represents apprxoimately 280,000 professional cattlemen throughout the country. Membership includes individual members as well as 51 affiliated state cattle associations and 20 affiliated national breed organizations.

Mr. Chairman:

The National Cattlemen's Association (NCA) appreciates the opportunity to offer comment on the bill S.1867 which, if enacted, would amend and supplement the acreage limitation and residency provisions of the Federal Reclamation Act of 1902.

The National Cattlemen's Association is the recognized national spokesman for the nation's beef cattle industry, an industry which represents the largest segment of American agriculture.

NCA represents 280,000 professional cattlemen, including individual members plus members of 52 affiliated state cattle associations and 20 national breed organizations.

The 160 acreage limitation issue is of importance to the livestock industry because many cattlemen own or lease considerable acreage of cropland for the purpose of producing feed and forage to sustain their cattle operations.

The controversy surrounding this issue has created many uncertainties for ranchers using Federal reclamation waters for crop production. Management, being a key to a viable cattle operation needs the flexibility to make decisions based upon factual and timely information.

The NCA would recommend that there be:

1. No residency requirements.
2. Recognition that 160 acres is not an adequate or efficient management land holding.
3. At least a 10 year divestiture period.
4. A workable definition of ownership.
5. Validation of existing contracts.

The NCA strongly supports legislation which would end the inequities and uncertainties now existing with Bureau of Reclamation contracts with land owners. If agriculture is to be a productive part of the private sector and is to recover from its current economic ills, land owners and the various states need to be assured of credibility and consistency from Congress and the Department of Interior, particularly:

1. A resolution of the acreage question so that management can proceed to make some long term decisions.

2. An equivalency provision on a project - not district - basis (districts vary widely in total area; some are quite small) with attention to elevation latitude, weather, soils and topography.

3. State court jurisdiction, not a limitation to "only Federal district court", so that state adjudications are recognized. This would appear consistent with present administration water policy. Many Reclamation projects overlay and are subsequent to existing private projects as the Klomath Basin in Oregon (see Charles Howland's attached statement presented to a House subcommittee in 1980).

4. Definition of comingled waters which provides for existing prior water rights.

5. Assurance from Congress and Interior that with the definition of acreage, contractual waters will, in fact, be delivered.

Section 107 of S. 1867 states that water from reclamation facilities may be used for "water quality, irrigation, municipal or industrial purposes only to the extent covered by a contract requiring payment for the use of such water."

Does this mean storage water now being taken from landowners for new purposes such as recreational uses in California and fish flows in the Yakima River in Washington will be required to have a payment contract? A news release from the Yakima Project manager is attached.

NCA would also appreciate some clarification or definition of terms. Does "full cost" include court costs and attorney fees assessed to landowners by districts?

In S. 1867, Section 201 (c) defines "landholding" as "total irrigable acreage". More accurately this should be: "acres to which water is contracted." Irrigable acres may lie within a project but have no water or have water from another source.

In conclusion, NCA recommends congressional action to resolve the many inequities inherent under existing law.

ATTACHMENT ONE

EXCERPT FROM 1980 TESTIMONY OF CHARLES T. HOWLAND, OREGON

BEFORE SUBCOMMITTEE ON WATER AND POWER RESOURCES

"At this altitude and given our short growing season 160 acres has never been enough. During the early years of the project, then through the Depression and World War II years nobody worried too much about acreage limitations. From the end of World War II on it has become a problem, that has been met in a variety of ways. The opinion by Mr. Cohen in 1947 affirming exemption on payout of construction charges merely reinforced a strongly held belief by all concerned that this had always been the case. Twelve ranchers in my valley paid up a total 1116 acres ranging from 2 to 271 acres. People with vested water right lands were persuaded to put the lands into the districts on a paid up basis, which assured exemption of the lands and allowed the districts to consolidate their delivery systems. Others signed Warren Act contracts which specifically exemption on payout, this further strengthened the districts. Some people operated in more than one district, a practice allowed by the 1902 law. Most of the districts had exemption on payout clauses in their contracts, the ones that didn't were assured they would be at the time of payout. With all this talk of payout, I think this might be the time to mention that when all the present contracts are paid out the United States will have been repaid 100% of the construction charges, plus there are 87,000 acres of land ceded to the U.S. by the states and opened to entry for homesteads and veterans; 24,0000 acres of this (all developed) is still owned by the United States to do with as it sees fit. The 1957 study, 23 years ago, estimated that the income taxes accrued from profits from the reclamation lands amounted to 95 million dollars, more than six times the total cost of the project."

ATTACHMENT TWO

UNITED STATES
DEPARTMENT of the INTERIOR

☆ news release

FOR IMMEDIATE RELEASE

U. S. BUREAU OF RECLAMATION
YAKIMA PROJECT

W. G. GRAY
575-5848
Dec. 3, 1981

Fish Flows for Incubation - Upper Yakima River - The Bureau of Reclamation will continue to maintain flows in the upper Yakima River for the 1981-82 Spring Chinook Salmon incubation period. Over 270 redds were found this year in the Yakima River between Easton and the Teanaway River and in the Cle Elum River below the Cle Elum Dam.

Target flows to be maintained are as follows:

Yakima River below Easton Diversion Dam - 100 ft 3/sec
Cle Elum River below Cle Elum Dam - 275 ft 3/sec
Yakima River at Cle Elum, Washington - ± 400 ft 3/sec

This decision was rendered today following instream evaluation of the effect of lower flows on the survival potential of all of the redds. A lower flow evaluation indicated a potential loss of some 30 redds whereas the recommended flows may only impact some 8 redds if severe freezing should occur during the incubation period extending through February 1982.

This committment of Yakima River Basin storage to meet incubation flows in no way commits the Bureau of Reclamation to such releases in future years.

The "flip - flop" operation of this summer and fall was a success. Had salmon not spawned in the Cle Elum River, incubation flows in the Yakima River could be maintained more than 50 percent of the time (Dec. through Feb.) with no reservoir releases.

If a "flip - flop" operation is used in the Yakima River Basin in 1982 a system should be designed and constructed prior to the spawning season to keep spawners from entering the Cle Elum River. The Bureau will work with the fishery agencies in developing and funding such an effort. If successful, the future demands on storage release to protect redds could be reduced drastically from the estimated 70,000 a.f. this year and the 60,000 a.f. last year.

The Bureau will continue to work with fishery and agriculture interest in the hopes of developing a long range plan compatible with both resources.

Senator NICKLES. Thank you very much, Ms. Burke.

Mrs. Brunner, you mentioned you were opposed to unlimited leasing and I think opposed to the amounts in the bill for increased leases and also for ownership. What amounts would you recommend, say for ownership and leasing?

Mrs. BRUNNER. We did not set any amount. We feel that unlimited leasing is an open door for corporations and even our neighbors to come in and purchase the land when it is available. We do not feel that was the intent of the original law. We recognize the original law has pretty well gone by the wayside but we still feel the intent should be there.

Speaking for ourselves in our district, if we go with class one equivalency we probably would be class four. That would give my husband and I quite an amount. If we went with Lujan's bill, it would be 960 and almost a double of that and equivalency. With this bill we would be able to have leasing, too.

Senator NICKLES. Do you think the 960 or the 1,600 is about right? Several witnesses did not mention amounts.

Mrs. BRUNNER. At one time we were at 640 with the leasing, inclusive of leasing. We have decided we should leave the door open because we do not want to set an exact amount. It is different in different areas and will be different because of the equivalency.

I would think we would not like to go with more than 1,300 acres.

Senator NICKLES. You are presently leasing yourself?

Mrs. BRUNNER. Yes.

Senator NICKLES. The 1,300 acres you just mentioned, would that be ownership and leasing combined?

Mrs. BRUNNER. Yes.

Senator NICKLES. How much do you have today between ownership and leasing?

Mrs. BRUNNER. We own 240 acres and our son owns 60 acres and we lease up to about 800 acres. That is ownership and leasing.

Senator NICKLES. Mr. Dressler, you mentioned some reservations about the idea of the limitation on corporations of 25 persons or more. In your association, how many people are in your association?

Mr. DRESSLER. We have 2,000 members.

Senator NICKLES. Can you give the committee an indication maybe by surveying your membership of how many people would be affected so we would have a better idea? Would you do that for the committee?

Mr. DRESSLER. I would be glad to do that. I know we have about 10 of our members now that have family only participants in their corporations and have more than 25 shareholders.

I would be glad to make a more detailed analysis and get back to you.

Senator NICKLES. I would appreciate it. You are from the part of the country that would probably be fairly representative and it could give the committee an idea of an input.

I am from a family corporation to some extent. I can see how that might pan out. It would be of benefit to us.

[Subsequent to the hearing Mr. Dressler supplied the following:]

WESTERN GROWERS ASSOCIATION

WGA FRESH PRODUCE

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TELEPHONE: 714/641-8000 TELEX: [illegible] 182-266

December 17, 1981

Gary G. Ellsworth, Counsel
Senate Committee on Energy & Natural Resources
3102 Dirksen, Senate Office Building
Washington, D. C. 20510

Dear Mr. Ellsworth:

Last week when I appeared before the Senate hearing on reclamation legislation, I was asked about the number of members of Western Growers Association who have family corporations with more than twenty-five shareholders. At this time our membership has about seven companies where there are family corporations of more than twenty-five shareholders. We have an additional ten that have between twenty and twenty-five and they can anticipate that with future family generation changes, they will expand their shareholder numbers to exceed twenty-five.

I hope the above is responsive to your inquiry. It is our concern that there is no justification to treat one group of family members or a corporation differently from another merely on some arbitrary number of family members who happen to be shareholders. The principal we understood the reclamation law to be based upon was individual, personal ownership of land and if each individual has his own settlement, as has been the case under current law, that should be a sufficient limitation to ensure the policies of the Act.

If I can be of any further assistance, please let me know.

Sincerely,

DON DRESSLER
Executive Vice President

DD/bc

Senator NICKLES. Mr. Miller, you mentioned the fact also of opposing unlimited leasing and the ownership amounts as in the McClure bill and as proposed by Secretary Watt.

What do you think would be an appropriate number for ownership and/or leasing?

Mr. MILLER. Senator Nickles, I would certainly say the McClure bill is closer to what we would consider to be a reasonable acreage limitation figure, although I would be reluctant to tell you we would support a 960 plus another 960 lease cap.

We have a number of members in our organization who are going to be affected by the outcome of this bill.

Our membership is not unanimous in this regard. It was a difficult position for us to come to, the specific points listed in our statement.

I would be reluctant to tell you that 640 acres is an ideal amount. I would say somewhere between 640 and 960.

Senator NICKLES. Your association pretty much agrees there should be some modification, some increase?

Mr. MILLER. Absolutely.

Senator NICKLES. A couple of statements were somewhat strong against the legislation. I think we are in the process, as everyone can see, of trying to come up with a figure. We have several who have mentioned it be unlimited and several think the limitation should be much lower.

We are just trying to get an idea of how we can make the law better and more equitable to all concerned.

You are for some modification, it is just the question of where?

Mr. MILLER. Yes.

Senator NICKLES. Opposed to the unlimited. You probably have quite a few of your members that it would be to their benefit to have greater leasing provisions or greater ownership provisions if they are in the buy position or the lease position.

Is that correct?

Mr. MILLER. That is true. The bulk of our membership are predominantly smaller scale operators. They are family-owned and family-managed farms and family-operated agriculture I think without a doubt is incredibly efficient and Government policy such as reflected in the Reclamation Act should do what it can to support the most efficient use of the water.

Senator NICKLES. Mr. Field, was your statement for no limitation or an increase?

Mr. FIELD. No limitation.

Senator NICKLES. With that position, is it your belief that we should have with the no limitation or with the increase from the 160, full-cost provisions?

Mr. FIELD. Yes; the idea that the economical farm, that there is no way to set a size for the economical farm. A farm has to be economical to operate.

Senator NICKLES. The cost attributed to the irrigation plus the interest should be borne by those receiving the benefits?

Mr. FIELD. Yes.

Senator NICKLES. You mentioned attorney fees, et cetera, and having some reservations about those being incorporated. You do not mind paying full cost but you did not want to have a lot of litigation fees and a lot of other fees involved in the determination of the full costs, you wanted that to be possibly a little more clearly defined.

Is that correct?

Mrs. **Burke**. I did not hear the last part of your question, sir.

Senator **Nickles**. Did you raise a question about determining the full costs, that you would be supportive of the full cost of the project and interest but had some questions about litigation fees, et cetera, being attributable and added to the full cost?

Mrs. **Burke**. Yes; we would have a reservation about that. We have no problem with the full-cost payout at least as it exists now; the full cost of our payout; particularly in the Yakima basin, which incorporates three counties, it is easier for me to give you a personal example.

Our water assessment is increasing by leaps and bounds. I am sure you understand that operation increases like any other inflationary cost. Ours is increasing because we must defend ourselves against in some cases the Bureau of Reclamation suits against our district.

One is primarily on behalf of the Indian nations. It is getting to the point where that has become a very overwhelming cost to our district. We feel that should at least be considered and possibly not included in the full cost of payout.

Senator **Nickles**. Thank you very much. We appreciate your cooperation and testinony before the committee. I would suspect as this legislation would progress, additional committee people may have additional questions.

We appreciate your assistance and we hope we will have it in the future as we progress with this legislation. Thank you very much.

Ladies and gentlemen, it is going to be necessary for us to recess to reconvene at the call of the Chair. It is our hope that we can be back in 15 to 30 minutes. With that, we will stand in recess until the call of the Chair.

[Whereupon, a recess was taken.]

The **Chairman**. The committee will come to order.

Our next panel is Gordon Nelson, coordinator, farm water, the National Alliance to Modernize the 1902 Water Law and George Ballis, National Land for People.

We will insert your prepared statement into the record, Mr. Nelson, and you may highlight or summarize it in any way you wish.

STATEMENT OF GORDON E. NELSON, COORDINATOR, THE NATIONAL ALLIANCE TO MODERNIZE THE 1902 WATER LAW

Mr. **Nelson**. Thank you.

I might mention that George Ballis and I have been friends for about 25 years. The first time we appeared on a platform on opposite sides on this very issue was before the Mercehead County Democratic Central Committee in California in 1959. Neither of us have changed our minds since.

The **Chairman**. Have you progressed since you have now left California and you now list Washington as an address or is that regression?

Mr. **Nelson**. That is just force of circumstance.

The **Chairman**. I understand.

Mr. **Nelson**. In view of the time constraints, Senator, I am going to bobtail even the oral remarks I was going to make. I have submitted some amendments to the committee which I believe will cover just about every issue that has been raised by the witnesses which have appeared before you and I am not going to go into the amendments in substance.

I would like to take a couple of minutes to talk about what I think is the other issue that seems to be hovering over the hearings, both on this side and on the other side. That has to do with what the purposes of the Reclamation Act are. So frequently as you listen to all the things folks want to do and you point out those are all committed under the present law or there are no violations involved, people fall back on a position which says, yes, but the intent of the law was to do so and so.

It is our contention or at least my contention that the purpose of the Reclamation Act was not to achieve some social objective of creating family-sized farms.

I read the Congressional Records, newspapers, and other unofficial publications going clear back to the 1880's and the record clearly shows that the primary purpose for the passage of a national Reclamation Act was to develop the West. This was done for two reasons.

One, to increase markets for the products of the East, and two, to expand trade with the Orient.

The most convincing evidence can be seen by reading the record of a series of hearings that were held by a select committee of the U.S. Senate which traveled 14,000 miles throughout the West in August and September 1889, exploring irrigation potential in the arid and semi-arid lands of the West.

The record of those hearings and contemporary newspaper accounts showed clearly that the purpose of irrigating the West was to stimulate economic and commercial development.

The San Francisco Chronicle, for instance, on August 23, 1889, carried 74 columns on irrigation. They editorialized that the West was on the threshold of a great era of development.

George Maxwell of San Francisco, who later moved to Phoenix and became the man who is identified frequently as being the leading force behind passage of the Reclamation Act, was quoted out of Washington in the Phoenix Gazette in 1902 as follows:

> The whole strength of the irrigation movement in the East and the reason for its remarkable growth has been the confidence of the business interests of the East that it was a movement that was really and genuinely proposing to make opportunities for settlers and create dense populations and make new markets and men who wanted to build homes would have the benefit of the opportunities created by the Government appropriations.

I would like to point out that Harry Hogan did a landmark study for the National Water Commission in 1972 on the subject of acreage limitations. He concluded that the only way you could come to a conclusion about what the legislative history of this act was was to have a preconceived conclusion and then go back through the record and hunt for things that supported it.

I would quote a record from the Department of Interior in 1902 which was written within a few months after passage of the act:

> The law is so general in its terms that its success or failure may be said to rest almost wholly on its administration. The Congress has practically committed the whole matter to the Secretary of the Interior and a volume might be and probably at some time will be written regarding the almost innumerable details which are not touched upon in the law.

I think that concludes my summary, Mr. Chairman.

[The prepared statement of Mr. Nelson follows:]

TESTIMONY OF

GORDON E. NELSON

C[illegible]nator -- Farm/Water Alliance

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Before the Water and Power Recources Subcommittee, Committee on Interior and Insular Affairs, U.S. House of Representatives, December 8 and 9, 1981.

and

Before the Senate Committee on Energy and Natural Resources, United States Senate, December 10 and 11, 1981.

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Washington, D.C.

Mr. Chairman, members of the committee:

My name is Gordon Nelson. I am the coordinator of an organization called the National Alliance to Modernize the 1902 Water Law, known more commonly as the Farm/Water Alliance. The alliance is an ad hoc organization which will go out of existence once a new reclamation bill is passed, and I am hopeful that I will be unemployed very soon.

My testimony will primarily cover two subjects.

First, the nature of the problems that will be left unsolved in the western states if we do not get a new reclamation bill. Secondly, I will discuss the background to the passage of the Reclamation Act of 1902--not as it is re-interpreted by present day advocates, but as it must have been according to the official and unofficial publications of that time.

I -- Problems Left Behind

It has been fashionable for newspapers, legislators and even many farmers to state that the reason we are all having to wrestle with reclamation legislation is that the big farmers in California need the legislation to get themselves off the hook. Either deliberately or through inadvertence, a great many facts that would indicate to the contrary are blurred over or ignored entirely by those who make such statements.

The committee should know that as far as compliance with the Reclamation Act of 1902 is concerned, almost every state has serious problems, and most of these problems have little to do with the question of big farmers versus little farmers. Let me recount a few of these:

Residency -- Undoubtedly the most pervasive problem is that of reinstituting the residency requirement. I'll not go into the history of that issue but I would like to point out that we now have a solicitor's opinion on the books saying residency is required, and another subsequent solicitor's opinion saying that not only is residency not required, but the Secretary of the Interior has no authority to impose it by regulation. The latter opinion was not officially issued, but even if it had been, the need for congressional action to resolve this question would remain. This affects not only the farmers on the land today. It also has a serious impact on the children of today's farmers. Many, many instances have come to our attention of farmers who fear that if a residency requirement is imposed they will not be able to leave their farms to their children.

Fortunately, the sentiment seems to be fairly strong for legislation to clarify this issue. However, I would strongly urge the committee to avoid incorporating language into the bill which leaves the impression that congress is repealing the residency requirement. We think the record should be left in such a state that Congress gives sanction to the interpretation which stood for 50 years--namely that there has been no residency requirement since the passage of The Omnibus Adjustment Act in 1926.

Validation -- Another pervasive issue is whether the farmers and irrigation districts in the reclamation states have a right to rely on the word of the United States Government--whether that word is spelled out in an actual contract, or only in the form of a letter from the Secretary of the Interior or one of his subordinates acting under a proper delegation of authority. There are dozens of irrigation district contracts whose validity has been put under a cloud by court decisions and recent administrative interpretations. In addition, Secretary Andrus granted certificates of exemption to almost two dozen irrigation districts and about 150 individuals, saying they were exempt from acreage limitations by virtue of their having paid off their repayment contracts, and a pattern of family size ownership having been developed. In many states throughout the west, many irrigation districts and individuals over the years have made decisions in reliance upon the word of their government. We believe that word should be honored.

Mention should be made of the fact that the same court case which appears to provide the underlying sanction for the Andrus exemption letters--based on payout and the development of a pattern of family sized ownerships--gives specific approval to leasing as an appropriate way to combine smaller ownerships into larger economic units while at the same time widely distributing project benefits to the owners of the leased land.

160 Acre Limitation -- The record is well established that for a variety of reasons the one place in the United States where acreage limitation laws have been diligently enforced is in the San Joaquin Valley of California. What has given rise to the current confusion over the state of compliance in California is that many of the most articulate and vocal critics of California agriculture have talked about violations of the

law as they wish it was. Unfortunately, many of these people have relied on re-creations of congressional intent as they would have scripted it, could they have done so, rather than on the way it was actually written. And, as will be developed later is this testimony, they have failed to make a distinction between what individual Congressmen and senators said and what Congress actually did.

The irony is that outside the San Joaquin Valley of California, particularly in the northern tier states, enforcement of acreage limitation laws has been lax or non-existent. In many, if not all cases, this was done with the implicit approval of the executive branch of the government--occasionally no doubt under pressure from members of the legislative branch. A rather remarkable record of examples of non-compliance with acreage limitation laws is contained in Senate Committee Report No. 95-67 of the 95th Congress dealing with equivalency. The consequence of all of this is that there are hundreds, perhaps thousands, of farmers in many states in the West who have bought land in excess of acreage limitations at market values and now face the possibility that unless the law is changed, they will either have to give up their water supplies, or put the land under recordable contract and agree to sell it at less than market prices. Losses in farm equities could run to the hundreds of millions of dollars.

Equivalency -- One of the mechanisms by which lands presently out of compliance with the acreage limitation law could be brought into compliance would be by the adoption of a modest increase in the acreage owned, coupled with a multiplier of some kind based on farm productivity factors. With the equivalency factor, an ownership increase to 960 or 1600 acres would be enough to relieve the anxieties of most farmers in the western states. In this connection, I should mention that an increase from 160 acres to 960 acres is not a six-fold increase even though it looks that way. The present limitation is based on 160 acres per person, but the 960 acres would be per family or farming unit. Thus, a family of six under the present law will not gain anything under the new law if the ownership limitation is increased to 960 acres per family.

II -- Purposes of the Reclamation Act

Next I would like to turn to what I sense is an important consideration for many of the members of the committee and the Congress, and that is the underlying motivation for the passage of the Reclamation Act when it was originally enacted in 1902. Certainly no one can read the history of the Bureau of Reclamation covering the depression years, the World War II era, and the post-World War II reindustrialization period without agreeing that the Reclamation Act has evolved into a multi-purpose industrial, agricultural and municipal program. Nevertheless, there is a certain commitment to the past which causes many people to feel that the program should be re-oriented to what they perceive to have been its original purposes -- even though they were not present at the time and their perceptions may not square with reality.

If there is to be such a re-orientation, then it is necessary to understand what those original purposes really were. Unfortunately, much of the testimony presented to this committee in recent years had been shaped to create the impression that the Reclamation Act was a social program. I do not believe the historical records show that to have been the case.

My own reading has taken me to source documents dating back to the 1880s -- including contemporary newspapers and public records, organizational archives, as well as more recent studies. Based on all that I have read, I am convinced that the Reclamation Act was passed in response to pressures to stimulate the economic development of the WEst.

In my reading I have tried to find something that would justify a conclusion that there was an underlying motivation for the act relating to some national purpose having to do with the creation of family size farms. I failed to find such motivation. If there _is_ a recurring theme, it is the importance of creating new opportunities for home making and home building to satisfy the needs of home seekers. Some of the people who have appeared before congressional committees in the last few years -- and many of the political and social scientists who serve as their gurus -- have gratuitously translated "homeseekers" to mean "farm-seekers" and "home builders" to mean "farm builders", and "home owners" to mean "farmers". These are faulty translations of words which had clear meanings in the latter days of the 19th century and still have the same meanings today. The meanings have been mis-translated in latter day writings to make them fit the particular social or political motivations of the writers.

It is true, of course, that in the years when we were largely an agrarian nation, being a home owner not uncommonly meant being a farmer. However, terms of the push for a national reclamation program during the closing decades of the last century, the homeowner/farmer was important because of the contribution he could make to economic development in the west, and not because of the desirability of the "family farm" as a social unit in some grand perception of American society.

In support of this proposition, I would offer a number of quotations.

The first is from a publication titled the "History of Public Land Law Development." It was prepared for the Public Land Law Review Commission in 1968 and it described the Reclamation Act of 1902 as

> "the greatest victory of the western states in securing to them the benefits of the economic exploitation of the public lands."

The man whom many authorities believe to have been the individual more responsible than any other for the passage of the Reclamation Act was George Hebard Maxwell, a lawyer from San Francisco who later settled in Phoenix.

Maxwell was a tireless worker and travelled throughout the country in support of a national irrigation program. In an appearance before the Trans-Mississippi Commercial Congress in Wichita, Kansas in 1899, he said the west, if irrigated, would support "a dense and prosperous population greater in numbers that the entire population of the whole United States today." He went on to say:

> "The enormous opportunities for increased home markets for our manufacturers and opportunity for home seekers which its reclamation would create, would make it worth the while of every manufacturer who wants markets, every wage earner who wants work, and every merchant who wants trade, every transportation company that wants traffic, and every man in America who wants a home on the land..."

Two years later, at a convention in Cripple Creek, Colorado, Mr. Maxwell again held forth in support of a resolution urging support for a national reclamation program, saying that the resolution was the result of an article which had appeared in the Chicago Tribune "a week ago last Sunday," which would have been July 7, 1901.

An examination of the Tribune files discloses that the article in question was a glowing account of the future of the West under irrigation, based largely on an interview with J.J. Hill, president of the Great Northern Railroad. Mr. Hill talked about United States domination of the trade with Asia. Said the Tribune:

> "Mr. Hill insists that the building up of such a trade will depend in great measure upon the development of the agricultural resources of the Pacific slope. To develop this he says that government aid in building irrigating canals will be necessary. Grain and flour will be the prime articles of export to the Orient.
>
> "The execution of this work (irrigation) is the one thing needed to give the United States the domination of the Pacific Ocean commerce and the supremacy of the world's trade.
>
> "People regard with amazement the present rapid growth of wealth in the United States, but this will be comparative poverty when with 20,000,000 people on the Pacific slope engaged in raising grain and manufacturing flour for the Orient, we can dispatch large freighters daily from each of the Pacific ports loaded with the manufactured goods of the Eastern factories, the cotton of the South, and the food products of the mountain valleys. Then a river of wealth will be turned into the United States, which will put to shame the visions of the wildest dreamers.
>
> "While it (irrigation) would make homes for a multitude of settlers, the greatest benefits would come to the manufacturers of the eastern and middle western states and their employees, and to the cotton raisers and spinners of the south."

Frederick H. Newell, who later was to become the first head of the reclamation service, declared in a convention speech in 1899:

> "The most important problem that can come to any body of public men, commercial or otherwise, in the West, is that of

> the increased utilization and development of the vacant lands both in public and private ownership. Before this question most of the other matters sink into comparative insignificance, for without an increase in population and productive capicity, the West cannot continue to furnish a market for the manufacturer or a field of operation for the varied industries of the country. The utilization of the vast extent of vacant land is not something which should be left to the farmer; it is pre-eminently a matter for the business man, whether concerned in manufacturing, transportation, or in handling the products of others. In fact, the farmer, as such, has least concern with the development of the varied resources of the vast West... To the merchant, however, the matter is entirely different."

Having advanced the position that the Reclamation Act was motivated by economic, rather than social, objectives, there remains yet a problem of how to deal with the many, references in the public discussion and official debate over the reclamation act which relate to "monopolists" and "speculators" and the need to keep Western lands out of the hands of "corporations."

Without in any sense trying to sweep this issue under the rug, let me try to highlight briefly for you what these issues were all about in the context of the conditions of that time.

First of all, it was recognized at the time that the earlier programs for the disposition of public lands in the West had largely been failures, and that the programs had led to widespread abuses by speculators. I am refering now to the Desert Land Act of 1877 and the Carey Act of 1894, as well as the Homestead Acts and other federal legislation opening up the public lands.

It was entirely consistent that proponents of western irrigation would be against letting land fall into the hands of speculators. It was not to the advantage of the western states and territories to let public lands come under the control of those would let the lands remain idle. This would not result in economic activity based on production. The western states and territories had no interest in those who would make no investment of their own capital and labor but would rather seek to benefit from the appreciation in land values which results from the investment of others. The states and territories wanted the land developed and put into production. The west wanted the increased population that would result from development, because commerce and trade would result.

There is an excellent discussion of the role of the family farm in the context of western development in a study prepared by Harry Hogan for the National Water Commission in 1972. The study itself dealt with acreage limitations and it has a great chapter on the family farm titled "The Farmer and the Agrarian Myth."

Briefly, the study makes the point that while the Jeffersonian concept of an agrarian society has been used as the basis for legislative and political rhetoric since the early days of the republic, the vision of the agrarian society has had little relationship to reality.

"If it ever had reality," Hogan wrote, "it ended with the time of the Revolution."

The farmer, Hogan concludes in the study, is and always has been basically an entrepreneur. Though his first needs were for himself and his family, his aim always was to produce more than he needed so he could sell his excess in the market place. As an entrepreneur, the farmer as he actually was was considerably different from the mythical family farmer of song and story.

Nevertheless, the mythic family farm provided justification for a long series of federal actions beginning in the middle of the 19th century. Though the *mythic* family farm provided the justification for the actions, the actions themselves were designed to meet the needs of the farmer as an *entrepreneur*. The study notes, for instance, that under the Homestead Act, the settler, once he had title to the land, could sell it for any purpose he chose. In the case of reclamation law, the actions failed to match the rhetoric because although the Congress imposed a limitation on ownership, it did not impose other conditions which would have assured that the projects were peopled by families and families only, living on and operating the farms. Even the residency requirement was interpreted soon after enactment (1910) to mean within 50 miles, no trivial distance in those days, and when the Act was restructured in 1926 the residency requirement itself was dropped.

Says the Hogan study:

> "Examination of the legislative history allows the selection of language of Congressmen and Senators to prove or disprove a Congressional intent to define a 'family farm' as having certain characteristics of owership, operation and residence.
>
> "*The legislative history is conclusive, however, only if it is examined with a preconceived conclusion.*" (Emphasis added)

The National Water Commission study makes the point that if Congress had intended to bring about family farming without regard to "free market considerations," then it would have imposed -- in addition to an ownership limitation -- a restriction on the type of operation (i.e. by a family) and family residence. The residency requirement, the study says, was "imprecise" and in any event was "soon abandoned both in program administration and in subsequent legislation."

Says the Hogan study:

> "The problem then becomes one of penetrating Congressional rhetoric about the 'family farm' to establish whether Congress intended to help the intrepreneurial farmer whose operation was only incidentally a family farm, or only the mythic family farm. The problem can be solved by looking at what Congress did as distinguished from what Senators and Representatives said." (Emphasis added)

The conclusions of Hogan's scholarly analysis stand in stark contrast to the words of the regulations proposed by the Department of the Interior,which refer to the amount of land "under the control of any one person" rather than "ownership" and which speak loftily of the purposes of the act as being:

> "(a) To provide opportunity for a maximum number of farms on the land, and for deserving individuals to get a start in farming.
>
> "(b) To distribute widely the benefits of Federally-subsidized reclamation projects.
>
> "(c) To promote the owner-operated family farms.
>
> "(d) To preclude the accrual of speculative gain in the disposition of reclamation benefited-land."

Given the unreliability of congressional rhetoric as an indicator of what is actually occurring in a congressional enactment, it is helpful to look beyond the congress and assess the mood of the constituency to which congress was responding.

An illuminating view is provided by a reading of the contemporary newspaper accounts and the actual record of the hearings of a select committee of the United States Senate which travelled 14,000 miles throughout the West in 1889 gathering information about the desirability of and the need for the irrigation of the arid and semi arid west.

Usually traveling in a special train, the committee began its labors in St. Paul, MN, on August 1, 1889. From there the select committee went to Sioux Falls and Huron, SD; Jamestown and

Bismark, ND; Glendive, Miles City, Billings, Bozeman, Helena, Butte, and Missoula, MT; North Yakima, Ellensburg and Walla Walla, WA; The Dalles and Baker, OR; Boise, ID; Salt Lake City, UT; Carson, NV; San Francisco, Tulare, Bakersfield, Los Angeles, San Bernardino, Riverside, Santa Ana and San Diego, CA; Yuma, Phoenix and Tucson, AZ; El Paso, Pecos and Fort Worth, TX; Santa Fe and Las Cruces, NM; Dodge and Garden, KS; Pueblo, Colorado Springs, Denver, Fort Collins and Greeley, CO; Cheyenne, WY; and Ogalalla NE, where they finished their work on September 19, 1889.

Wherever the committee went, it was accorded an almost royal welcome -- although in Colorado Springs the welcoming party arrived late and the visiting senators caught a street car to the Antlers Hotel, where they conducted their hearing in the bridal suite. Throughout its travels, the committee was provided with abundant information about what the impact of irrigation would be on the productivity of the land and what irrigation would do in the way of increasing land values. The family farm was largely ignored.

There was intense interest in the committee's subject. On Friday, August 23, 1889, the San Francisco Chronicle carried 74 columns on irrigation. It covered not only irrigation in the United States but throughout the world.

In an editorial on the same day, the Chronicle said of the extraordinary amount of space devoted to irrigation:

> "No fancy picture has been drawn, no gaudy or glittering colors have been used, but plain and simple facts have been stated, which must commend themselves to the consideration of all who are concerned for the future of our common country. We stand upon the threshhold of a great era of development, and if the article in question shall serve to attract attention to one of the most important of all national topics, the Chronicle will feel that it is well repaid for its labor."

Further insights into the reasons for the passage of the Reclamation Act can be gained by a reading of the annals of the Trans-Mississippi Commercial Congress and the National Irrigation Congress in the latter years of the 19th Century. The National Congress, quoted in the Department's draft Environmental Impact Statement, was founded in Salt Lake City on September 15, 16 and 17, 1891. A reading of the proceedings of that and subsequent sessions of the Irrigation Congress makes it clear that economic development of the West was the objective of reclamation. The National Irrigation Congress voted initially to ask the Federal government to cede the Federally owned lands in each state to the states, so that they might be sold and the funds used by the states for irrigation development. The Irrigation Congress in the ensuing years abandoned its request for cession of the Federal lands to the states and adopted a different course -- federal construction of irrigation projects. The important thing was to get economic development started and the National Irrigation Congress did not much care how this was brought about. They were flexible.

Elwood Mead, who later was to play a leading role in reclamation and is one of the best known of the Commissioners of Reclamation, told the Trans-Mississippi Commercial Congress in Houston in 1900:

> "The potentials of irrigation are, however, to be measured not alone by the possible extent of the agricultural industry, but by the development of other resources which they will make feasible. The best and largest use of the grazing lands, the utilization of the forest, the development of mines and quarries and the maintenance of railroads and commerce in the western half of the United States, all hinge upon the control and use of the streams in connection with the fundamental industry of agriculture. Since irrigation is essential to agriculture in the arid states, the extent and character of its development must surely measure the superstructure to be built upon that foundation." (Emphasis added)

The Trans-Mississippi Commercial Congress, at the aforementioned convention in Cripple Creek, adopted a resolution calling for the reclamation of arid lands, and included as its justification:

> "The settlement of these arid lands would create new population in the West, and new home markets for our American manufacturers and merchants with marvelous rapidity, and would stimulate prosperity in every section of the country and among all classes of the American people.
>
> "The development of agriculture on irrigable lands of the West would greatly stimulate mining and the construction of new transportation facilities, and increase the home demand for the products of the western farmers in the mining regions of the West.
>
> "The countless millions of Asia would absorb all of the surplus of the ordinary farm products of the irrigated lands of the West, so that any competition between the farmers of the West and farmers of the East would be absolutely impossible."

The program favored by the Trans-Mississippi Commercial Congress was to bring water to the land, which would be made available for settlers

> "...who will go upon the land and build their homes there, thus opening up opportunities for millions now homeless, and giving to every one who wants it a chance to get a home on the land, thereby creating a dense population in the arid region, which will enormously increase the home markets for the products of all eastern factories and contribute to the general prosperity of the entire country."

On March 28, 1902, the Arizona Gazette carried an article with a Washington dateline which said:

> "George H. Maxwell, executive chairman of the National Irrigation Association, has returned to Washington after an absence of several weeks in the West. The change in public sentiment throughout the eastern states in the last two years in favor of national irrigation, which has found marked expression in the present session of Congress, is conceded to be largely due to the work of this national association, a majority of which represent the largest commercial and manufacturing concerns in the country." (Emphasis added)

In a later paragraph, Mr. Maxwell is quoted:

> "The whole strength of the irrigation movement in the East, and the reason for its remarkable growth, *has been the confidence of the business interest of the East that it was a movement which was really and genuinely proposing to make opportunities for settlers and create dense populations and make new markets,* and that men who wanted to build homes would have the benefit of the opportunities created by the government appropriations." (Emphasis added)

After the passage of the Reclamation Act of 1902, the Trans-Mississippi Commercial Congress met in St. Paul. At that meeting, W.H. Wooldridge of Hinsdale, MT, discussed the pitfalls confronting the West if sectional rivalries developed over which reclamation projects should be built first. He urged the delegates to the Commercial Congress to take a tolerant view of the interest of easterners in setting the priorities. He said:

> "The passage of the irrigation bill *was secured largely through the efforts of the eastern business men and manufacturers* and through the National Irrigation Association, of which most of these business men and manufacturers are members. It is safe to say that without the aid of this association no irrigation legislation would have been possible. It was their fight and they won it. This being the case, is it not safe to leave the manner of the inauguration of the work to the same source? *Montana people are interested in the fullest possible development of the entire Western country.* It matters not to us what particular section or locality is recognized first." (Emphasis added)

Evidence that the West was crying for economic development was abundant. The east was becoming crowded (!) and the westward migration was under way and intensifying. Jobs and industry were necessary in the West. There was an increasing demand for port and railroad facilities to expand trade with Asia. The political leaders of the Western states and territories were pressing the Federal government for new opportunities for expanded commerce. Earlier legislation -- Desert Land Act and the Carey Act among others -- had not done the job. Pressure mounted for government development of the major irrigation resources in the West.

Ironically, the very quotations used in the Department's draft EIS (page 3-5) further support the view that economic development was the motivation for the Act. It was the railroads who were pushing the irrigation legislation, said the opponents.

There is no disagreement that there were many and repeated expressions of concern over absentee ownership and speculation. But those words, as used in the closing years of the 19th Century, had an entirely different meaning than they do today. The concern then was that absentee owners would retard western development by reaping where they had not sown. Today, the criticism of "absentee owners and speculators" (which in fact are largely nonexistent) is that they are too eager to expand economic development.

One example of the problems caused by speculators was cited by Elwood Mead (referred to earlier) who was Territorial Engineer for the Wyoming Territory when he appeared before the senate select committee in Cheyenne on September 17, 1889. He said:

> "Unfortunately, the building of large canals to furnish water to the settlers on public lands gives rise to a condition of affairs which, while well understood here, is apparently not appreciated elsewhere. Before the canal is built these lands are valuable only for grazing purposes, which value in most cases does not exceed 50 cents per acre.
>
> "The construction of a canal, however, carries with it the assurance of their reclamation, enhancing their value to that of farming land, so that without the purchase of a water right or without the owner of those lands having in any way

> contributed to their improvement, their value is increased at a low estimate from $5 to $15 per acre. This unearned increment is due entirely to the expenditure and efforts of the ditch company which expects its return from the rentals of water to the settlers on the lands thus made susceptible of cultivation. If therefore all filings under the ditch were made by persons expecting to become cultivators of the soil, and who would at once become users of the water, no harm would come.
>
> "Unfortunately, however, our land laws make possible an entirely different result. This increase in value resulting from the construction of the ditch is a rich field for the speculator. Parties having no desire or intention of becoming farmers can through the Pre-Emption Law, the Homestead Law and the Timber Culture Law obtain possession of 480 acres of this land without having to rent a gallon of water from the ditch company or in any way contribute to its maintenance or advantage. By the expenditure of 25 cents an acre they can in the same way obtain a three years' option on 640 acres additional by desert entry. Thus it is that over 1,000 acres of land are withdrawn from honest settlement and the speculator or entryman is in a position to blackmail the ditch company as it is only by its buying him out and disposing of the land to bona fide farmers that it can derive any income from the water supply.
>
> "This situation of affairs has made it impossible in this territory to construct large ditches simply as common carriers of water. The success of the enterprise makes it necessary that the lands should at once be brought under cultivation, and to accomplish this there must be some control over their settlement. This neither the ditch company nor the authorities can attempt at present."

In other instances, a company would go out and develop an irragation system -- with private capital and watered stock -- in the expectation that they could then sell the land to settlers at high prices and sell or "rent" the water to them. Most of these speculative ventures went broke because either the people who bought land were not willing to endure the rigors of an agricultural life, or they were ill equipped to do so even if they had the spirit. Water "rents" are still a part of the jargon of irrigation in the West.

Speculation in public lands was not limited to eastern syndicates, Wall Street bankers or any of the other assorted bogey-men of that or any other age. Individuals and families did the same thing. Many families claimed two or more separate parcels of land, farmed the one and held the other in the expectation that it would appreciate in value and bring a handsome profit when it was sold. Others claimed multiple parcels under different laws and then sold one or more parcels in order to raise the capital to develop the other.

For someone interested in a challenging intellectual assignment, an effort to rewrite the history of the Reclamation Act of 1902 in such a way that it will support the sociological objectives of the 1980s may have a certain allure, but the fact is that there is scant evidence of any clear direction from the Congress about what the specific "intent" was.

The Department of the Interior, in quoting President Theodore Roosevelt on page 3-3 of its EIS, quoted the concluding sentence from one paragraph of the speech, but left out the preceding material, thus masking the full intent of what the President was saying. Here is the paragraph in question, with the portion left out by the Department of Interior underlined:

> "The reclamation and settlement of the arid lands will enrich every portion of our country, just as the settlement of the Ohio and Mississippi valleys brought prosperity to the Atlantic states. The increased demand for manufactured articles will stimulate industrial production, while wider home markets and the trade of Asia will consume the larger food supplies and effectually prevent Western competition with Eastern agriculture. Indeed, the products of irrigation will be consumed chiefly in upbuilding local centers of mining and other industries, which would otherwise not come into existence at all. Our people as a whole will profit, for successful home making is but another name for the upbuilding of the nation."

Rather than being narrow in scope, as implied by the drafters of the EIS, President Roosevelt's concerns were sweeping and reflected the truly national character of the new irrigation program.

And in a report to the Congress in November of 1902, reporting on the first few months of work under the Reclamation Act of 1902, the director of the United States Geological Survey said (with clairvoyant insight):

> "The law is so general in its terms that its success or failure may be said to rest almost wholly upon its administration Congress has practically committed the whole matter to the Secretary of the Interior, and a volume might be, and probably at some time will be, written regarding the almost innumerable details which are not touched upon in the law."

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The **Chairman**. Thank you very much.

Mr. Ballis?

STATEMENT OF GEORGE BALLIS, NATIONAL LAND FOR PEOPLE, INC.

Mr. **Ballis**. Gordon looked into history and decided what he wanted to find and found it. Since 1959, this is one of the few times I have ever agreed with Gordon Nelson but I want to agree with the quotes he read and with the spirit of those quotes, I would like to make an extension of those remarks.

The other quotes that go along with those quotes talk about the way you really develop the West. You have resident-operating farmers, therefore, you have more business in a local area. You have more jobs in a local area. You have more opportunity for people.

The real way to build the West or any other community is to have a lot of people have a stake and an ownership in that property.

Gordon, I thank you for bringing that information to my attention.

We have a written statement and several tons of true facts. I will try to take only about 5 minutes to summarize it.

I have a feeling that the legislation is necessary. When we first started this struggle in 1957 or 1959, we were of the opinion that what we ought to do is just enforce the present law. We were finally persuaded after we won a court suit and we heard of the problems people were having in irrigation districts outside California. I am from Fresno and my direct experience is limited to the California area.

We were convinced after listening to the testimony on Secretary Andrus' proposed rules and we did not care for the rules and when we heard about the other problems, we decided that you had to have some legislation.

If my memory of history is correct, we were the first group to propose legislation in December 1977. Since our original proposal, we have made several amendments based on further facts.

We favor legislative action. We favor legislation which narrows the authority of the Secretary of Interior and defines it very precisely.

We think that all the legislation except of course the legislation we proposed is too blunt an instrument to accomplish what needs to be done, and what needs to be done is to support the continued economic development of the West through the most efficient form of farming we know of in the world, and that is farming by resident family farmers.

Every study done by researchers at universities or studies that come out of empirical experience of farmers reaches this same conclusion. Even the large corporate farms reach the same conclusion.

Tenneco says in one of its annual reports and agricultural reports in 1977 that the most efficient form of farming is a small- to medium-sized unit run by the owner who lives on or near the land.

We heard a woman testify earlier about how they bought a tract 75 miles away from their current operation and found that was not an efficient relationship because it was too far away.

That is what we want to fashion. We have to fashion it in 17 Western States of very wide conditions, very differing conditions. We have to fashion it in such a way that prevents or at least discourages the entry of large operations of nonfarm investors who invest in farmland not for its productive capacity but for its tax-producing capacity.

In almost all cases, such endeavors end up being very inefficient farming operations.

For instance, residency. The bill abolishes the residency requirement. There are some problems with residency and we recognize those problems. We do not think the answer is to abolish residency entirely.

If we look throughout the West and if our aim is to support resident-family farmers as the most efficient form of agriculture, it is proven through the centuries and even in Communist countries who have learned they get most of their farm production from the people who have little plots around their houses and not from the collective farms.

If we look at that, we say we have to have some sort of residency requirement or otherwise people who would be real farmers are going to be bid out of the land by speculators or investors who want the land for tax purposes or whatever other purpose to hide money.

We need residency. How can we have a residency requirement which is reasonable and which accomplishes those purposes in all of the areas where we have reclamation programs, from the very coldest to the very warmest?

Our proposal, based on our experience and listening to the experiences of other people after the hearings in 1977, was that the residency ought to read as follows.

> Fifteen miles from the land irrigated or a distance no greater than the nearest incorporated town or a distance of within 15 miles of a non-irrigated plot which is integrated with the irrigated land.

There would be some exemptions. There would be exemptions for people who retire from farming and who retire from farming and as long as they own it. There would be exemptions for people who inherited that family farm from a working farmer but if and when that land were transferred or sold by the heirs, then the residency requirement would become enforceable again.

Also exempt we feel would be the existing nonaccess landowners who are absentees until the next transfer of title. In other words, if somebody's grandson had inherited this land from a grandfather, et cetera.

As far as we are concerned, to our knowledge, that takes care of almost all of what we consider to be the legitimate objections to a residency requirement.

If there are other facts that need to be taken care of, we are willing to consider them and consider other amendments.

We think a residency requirement is absolutely necessary if we want to preserve family farming.

It is one of the primary devices to discourage investors, nonfarm investors, from using farmland for other purposes. One of the main problems we are having in agriculture right now is the price of land. As we look around the country we find there are a lot of people moving into the farming area, foreign investors to a slight extent, doctors, and lawyers, and people who want a place in the country, et cetera.

I have been talking about Washington and people are saying, I have a farm. I say, tell me about this farm. They have a shack over in Virginia with 40 acres. That is OK. I do not know what that land is worth. Maybe that land should be in commercial farming rather than somebody's hobby farm.

I can go through each one of the provisions of all the legislation that is proposed and analyze it in detail as I have the residency. Obviously we cannot stay here all afternoon.

I think each one of them has to be examined in that detail. We have to use a scapel when we change this law in such a way that we do not destroy in amending it and reforming it the very things that we want to preserve, the most efficient form of agriculture in America.

One of the things I would like to point out is a lot of people are using some terms which are not fully defined. Someone says, what if these people are paying out the project, why should there be any regulation?

There is never a payout. We all know that. We are talking about paying out the obligation to the Government. The obligation to the Government under irrigation law is based on the farmer's ability to pay, not the actual cost of the irrigation project.

I have listened to Secretary Watt and others talk about full cost. Gordon is doing another thing with me on the full cost. He says we are in favor of full cost but we are in favor of reasonable full cost.

Either you are in favor of full cost or you are not. Either you are paying full cost or you are getting a subsidy.

I think we should analyze that and talk about whether we are really paying full cost or not. There are some studies which have been done by the GAO and also the University of California which indicated at 1976 figures furnished by the Bureau of Reclamation, assuming there was to be no inflation, and assuming there were no additional project expenditures, that the irrigators on the average would have to increase water rates 17 times to pay for the water with no interest and it would take 775 years to pay out the then outstanding debt at the current rate of discovery with no interest.

I know there is a rush to do things and I know this question ought to be settled. It seems to me it ought to be analyzed in the realities that exist and see if we can relate those realities in such a way to preserve an American system, the most efficient form of agriculture we know of.

As far as the exemptions are concerned, we also join those folks who oppose exemptions for charitable and religious organizations. We also oppose exemptions for State-owned farms. We think the current law on State-owned farms is much too lenient. I think it says something about getting rid of the land in 25 years. We think it should be 5 years and we think that the people who lease the land ought to have the first option to buy it at a reasonable price and we ought to get the States out of farm lands.

Thank you.

[The prepared statement of Ms. Frampton follows:]

STATEMENT OF MARY LOUISE FRAMPTON
Before The
SENATE ENERGY COMMITTEE
December, 1981

My name is Mary Louise Frampton and I am counsel to National Land for People, Inc., an organization of small farmers and consumers whose purpose is to foster the growth of the family farm. I am submitting testimony here today in opposition to the Reclamation Reform Act of 1981, S. 1867, because it would defeat the very purposes for which the reclamation law was enacted.

Acreage Limitation - S. 1867 would allow an individual to receive the full federal subsidy for 1600 acres of leased land and 1600 acres of owned land. This new "3200 acre limitation" would result in a concentration of the federal benefit in the hands of a small number of large landowners and would make a mockery of federal reclamation policy. A few statistics aptly illustrate the radical nature of this proposal.

The government subsidy to the reclamation program has been variously calculated at between $1,422 and $2,200 per acre[1] in the largest reclamation district in the county, the Westlands

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1/ Draft Environmental Impact Statement on Acreage Limitation (January 1981); Special Task Force Report on San Luis Project (January 1978); Leveen, Reclamation Policy at a Crossroads, 19 PUB. AFF. REP. 1, 3 (1978).

Water District located in the San Joaquin Valley in California.[2] Hence, the benefit to a single 3200 acre farm would be $7,040,000 of the taxpayers' money

The common retort of large landowners to such statistics is that a farm of any lesser size is not economically viable. Yet numerous governmental and university studies and reports indicate that farms one-tenth the size proposed by S. 1867 provide a lucrative return to the farmer. The U. S. Department of Agriculture calculated the net annual income at over $30,000 for a 160 acre farm in the Westlands Water District; over $64,000 for a 320 acre farm; and $101,000 for a 640 acre farm.[3] Thus, according to the Department of Agriculture, the 3200 acre farmer would bring home $505,000 per year with the federal subsidy. Numerous other studies

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2/ The subsidy has three components. First, the farmer repays the construction costs of the project to the government over a forty-year period at no interest; thus, even at the low interest rate of seven percent, the interest over 40 years constitutes 75% of the costs of the project. Second, the farmers repay construction costs only to the extent of their "ability to pay" and the remainder is paid by users of hydroelectricity. Third, the price of the water delivery to the farmers is usually a fixed amount over several years in spite of the effects of inflation on the costs of operation and maintenance. Professor Leveen concludes that on a project with a cost of $3.62 billion, 56.7% would come from electricity sales, 40% from general tax revenues and 3.3% from farmers.

3/ U. S. Department of Agriculture, THE U. S. DEPT. OF THE INTERIOR'S PROPOSED RULES FOR ENFORCEMENT OF THE RECLAMATION ACT OF 1902: AN ECONOMIC IMPACT ANALYSIS, E SCS-04, tables 8 and 9 (1978).

have substantiated these figures.[4]

Considering such income figures, it should not be surprising that 84% of the farms in California are less than 500 acres, 71% are less than 180 acres, and 47% are even less than 50 acres.[5]

Moreover, the Draft Environmental Impact Statement on Acreage Limitation found that a 500 acres parcel in the Westlands Water District would produce 98% economic efficiency, the highest efficiency tested.[6]

In addition, that same document reported that the maintenance of small family farms in the 160 to 640 range would not only not increase the cost of food and fiber, it would probably lower it.[7]

In light of these facts, what possible justification can exist for increasing the number of acres for which an individual can receive the federal subsidy from 160 to 3200?

4/ Goldman, et al., ECONOMIC EFFECT OF EXCESS LAND SALES IN THE WESTLANDS WATER DISTRICT, Div. of Ag. Science, Univ. of California, Special Publication #3214, June 1977, at 32. Draft Environmental Impact Statement on Acreage Limitation (January 1981) at 5; Ely, et al., Westlands Appraisal Seminar Group, ASSESSING 320 ACRE FARMING IN THE WESTLANDS WATER DISTRICT, Dept. of Ag. Econ., Univ. of Cal. at Davis, May 1976; Seckler & Young, Economic and Policy Implications of the 160 Acre Limitation in Federal Reclamation Law, Am. J. Agric. Econ., 575 (1978); Small Farm Viability Project, THE FAMILY FARM IN CALIFORNIA 12 (1977).

5/ Small Farm Viability Project, THE FAMILY FARM IN CALIFORNIA 5 (1977).

6/ Attachment II, Table F.

7/ Draft E.I.S. at 3-28.

S. 1867 also provides that an individual may lease more than 3200 acres if he or she pays "full cost" for all water supplied to leased land in excess of 1600 acres. Unfortunately, there is considerable debate about what constitutes the "full cost" to the government of supplying water. Actual "full cost" has been calculated at $170.00 per acre foot[8] (as opposed to the $11.50 and $14.70 now being paid) but it is likely that the government would utilize a "full cost" formula that would not produce full reimbursement.

Residency Requirement - S. 1867 would repeal the residency requirement which has been part of reclamation law for almost eighty years. Although the residency requirement is a difficult concept for some urban people to understand, its importance cannot be overemphasized.

The residency requirement was originally enacted to insure that it was the farmers themselves rather than investors and speculators who benefited from the subsidy. The same principle applies today. Those who have studied the reclamation program have affirmed the significance of the residency requirement.[9]

Aside from insuring that the benefits of the reclamation program will flow to farmers rather than speculators, the residency requirement has another important role. The strength of our society depends as much on our farmlands and rural towns as it does on our cities. Yet without a residency requirement most of the benefits

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8/ Leveen, Reclamation Policy at A Crossroads, 19 PUB. AFF. REP. 1, 3 (1978).

9/ Special Task Force Report on San Luis Unit (January 1978) at 209, 213; 125 CONG. REC. S 12, 478 (former Secretary of Agriculture Bergland); 42 FED. REG. 43, 044 (1977) (proposed regulations governing excess land sales approval).

of the government subsidy would be exported from the rural areas, thus providing "fewer opportunities to diversify and internalize the economic base" of such regions.[10]

By repealing the residency requirement and expanding the acreage limitation to 3200 and above, the Reclamation Reform Act of 1981 would effectively gut the reclamation program and provide an enormous governmental subsidy to a small number of wealthy landowners. In an age of fiscal austerity such a radical alteration of the reclamation program would be highly inappropriate.

10/ U.C.L.A. School of Architecture and Urban Planning, The Westlands: Planning for Change Under Enforcement of Reclamation Law, LVI (1977).

The **Chairman**. Thank you very much.

Checking with staff to refresh my memory, the only projects of which I am aware in which the irrigator pays only that which he can afford to pay is where there are other project revenues to pay the balance. In any project, there is a division between irrigation benefits, power benefits, municipal/industrial water, recreation, fish-and-game benefits, and that portion which is allocated to irrigation is fully recovered from the project, either from the payment by the farmer or other revenues generated by the project itself.

Mr. **Ballis**. I would agree with that. If I said that was not the case, I misstated that. I agree with that.

The **Chairman**. I did not think you had misstated it. I wanted to make sure the record accurately reflected where the subsidy comes from if there is a subsidy with respect to the lack of full repayment by the farmer of the irrigation benefit assigned to that project.

Mr. **Ballis**. It is going to be repaid at some future time but it is not entirely repaid by the irrigator.

The **Chairman**. It may not be fully paid by the irrigator in some in which they pay only that portion which is deemed in the authorizing legislation to be that portion which they are capable of repaying. The balance of that irrigation cost in the project is paid from other project revenues.

It is not spread across the taxpayers of the United States as a whole, if we separate out the interest question.

Mr. **Ballis**. I would put a question mark behind that. The way I read what is happening, that is not exactly the way it works all the time.

The **Chairman**. I was trying to refresh my memory. The staff cannot think of any time nor can I when it does not work that way. If there is such a case, I would be interested in it.

Mr. **Ballis**. There is an audit going on of the Central Valley project and there is some indication that the power revenues are not doing what was projected and so forth. There may be a problem in that area when somebody finally puts all the numbers down as they really are.

The **Chairman**. Mr. Nelson, I wanted particularly to call attention to one portion of your prepared statement because I think it says well what needs to be said and people need to understand.

That is the portion at the top of page 5 in which you add:

> In this connection, I should mention that an increase from 160 acres to 960 acres is not a sixfold increase even though it looks that way. The present limitation is based on 160 acres per person but the 960 acres would be per family or farming unit. Thus, a family of six under the present law will not gain anything under the new law if the ownership limitation is increased to 960 acres per family.

The reason I mention that in particular is I think it is essential to recognize that we are moving from a building-block concept of 160 acres per individual member of the family which is the pattern which has developed to an aggregate limit for the family as a unit, whatever that acreage limitation may be.

I appreciate your making that point. I think it is an important one to be understood and there is an essential difference between existing law and that proposed in title II of the bill.

Mr. **Nelson**. Thank you, Mr. Chairman.

The CHAIRMAN. I thank you both. We appreciate your testimony. Mr. Ballis, it is good to see you again. If we have another hearing, I expect I will see you again.

Mr. BALLIS. Maybe we can appear on television again.

The CHAIRMAN. Our next panel consists of Robert E. Moore, executive vice president, Agri-Business Council of Arizona; representing Wellton-Mohawk irrigation and drainage district, unit B irrigation and drainage district, North Gila Valley irrigation district and Yuma-Mesa irrigation and drainage district is Tom Choules accompanied by Clyde Gould, manager, Wellton-Mohawk.

STATEMENT OF ROBERT E. MOORE, EXECUTIVE VICE PRESIDENT, AGRI-BUSINESS COUNCIL OF ARIZONA

Mr. MOORE. Thank you, Mr. Chairman.

My name is Bob Moore. I represent the Arizona Agri-Business Council and I would like in addition to the prepared testimony make some additional comments for the record.

I think the thrust of the testimony to the House subcommittee on Tuesday and Wednesday and I believe to the Senate committee thus far is that the 1902 act must be changed.

Specific and complete amendments to S. 1867 have been presented by the Farm Water Alliance and the National Water Resources Committee.

Arizona's Agri-Business Council supports and urges your favorable consideration of the amendments they have set forth.

Let me offer some additional thoughts on the miracle of reclamation and the basis for continuing the reclamation concepts through S. 1867.

Supplying water via reclamation has been called welfare water, and a subsidy to large corporate farmers.

Attitudes reflected in those phrases in my mind represent very narrow, satisfied with half-truth thinking.

A quick review of America's position in international agriculture may serve to improve the perspective on this and I would like to focus on just two aspects:

First, the population required to maintain the nation's agriculture and the amount of a family's annual income dedicated to food-and-fiber costs by given nations. These data come from the Agricultural Council of America and have a 1979–80 date on them.

The CHAIRMAN. I have been notified that we have received permission to sit beyond the hour of 12 and we will continue to hear witnesses. I thank everyone. For those of you who have not been heard, I am sure you will recognize that as good news.

I want to thank particularly Senator Metzenbaum who was the Member who had expressed the concern. After explaining to him that it was for the convenience of the witnesses involved who had been here for the House hearings and had come from some distance be removed any question with respect to the sitting of the committee beyond the hour of 12.

I want to express that thanks on the record to let you know that action has been taken.

Mr. MOORE. In India, 65 percent of the population remains on the farm with 50 percent of the family's income dedicated to food-and-fiber production. In Brazil, those numbers are 40 percent on the farm and 47 percent of their income dedicated to food-and-fiber production. In the Soviet Union, 18 percent on the farm with 35 percent of the income dedicated to food-and-fiber consumption.

In Japan, 14 percent on the farm and 20 percent annual income required for food and fiber. In France, 10 and 19 percent. In Australia, 6 and 16 percent. In the United States, those numbers are 2 percent and only 14 percent of an individual family's income to provide itself with required food and fiber.

I think there is no better measure of America's agriculture, its efficiency, its social contribution and its environmental soundness to this Nation and to the world.

Reclamation cannot claim all the credit but it has been and should continue to be in the future a very significant national commitment. The American consumer has been the subsidized beneficiary as witnessed by the numbers I just gave you.

The national welfare in the highest sense has been the result.

On behalf of Arizona's reclamation farmers, I urge you to act to build on the positive gains of the 1902 act. The amendments of the Farm Water Alliance and the Agri-Business Council to S. 1867 provide the mechanism for perfecting that future social, economic, and environmental progress.

We urge this committee's favorable consideration of S. 1867 with those amendments. Thank you.

[The prepared statement of Mr. Moore follows:]

TESTIMONY ON S.1867
MR. McCLURE'S BILL TO AMEND THE FEDERAL RECLAMATION LAW

Mr. Chairman, Members of the Committee, my name is Robert E. Moore and I appear before you on behalf of the Agri-Business Council of Arizona.

ABC is a private, non-profit, voluntary association of farmers, ranchers, suppliers, processors and agricultural financiers. At this time, our membership represents over 85% of Arizona's irrigated (non-Indian) farmland.

Our primary efforts are government liaison, technical support to our membership and a public information program. Under all three of those thrusts, we have been involved with recent Congressional efforts to modernize the 1902 Reclamation Law.

We have independently studied both S.1867 and Representative Lujan's H.R. 4265; we have reviewed their provisions with our membership and with State water officials in Arizona; and, we have participated in discussions of the Farm Water Alliance involving the several affected States.

From that perspective, we urge your early and favorable consideration of S.1867. Sen. McClure's Bill embodies the spirit and methodology of change consistent with the needs of reclamation and supportive of the Nation's need for economic revitalization. We are doubly pleased that Arizona's senior Senator is a co-sponsor.

As stated, we participated with the Farm Water Alliance and their testimony embodies the several amendments which we believe will perfect both the intent and the implementation of reclamation reform.

Senator McClure's Bill affirmatively does away with residency.

Section 101 recognizes and celibrates the settlement and development of the West through reclamation. It faces the reality that the amenities of the urban community do not detract from successful and proper use of reclamation water on distant acreages. Modern markets, suppliers, processors and financiers are now more important to future reclamation success than is a requirement to live on the property. We recommend Section 101 to this Committee's favorable action.

Section 106(a) is recommended for amendment to clarify the "paid-out is exempt!" provision, and, to remove any involvement of Rehabilitation and Betterment Act funding in the determinations otherwise provided for by S.1867.

Additionally, there are amendments offered by the Farm Water Alliance to clarify the status of districts receiving interruptible replacement supplies, and waters in exchange or as substitution for non-project waters. ABC urges your favorable consideration of the Farm Water Alliance proposals to Section 106.

Section 107 line 20, page 9; ABC respectfully requests your favorable consideration of an additional phrase, as follows:

> ". . . of those facilities, may be used for water
> quality, GROUNDWATER REPLENISHMENT, irrigation, . . ."

Our point is that Arizona's Groundwater Management Act of 1980 holds the promise of marrying flood control to water supply enhancement without sacrificing the key purposes of either activity or their physical features. We urge the Congress, starting with this Committee, to aid in this purpose by making groundwater replenishment explicitly one of the permissible functions.

Section 201(b), line 16, page 13; we urge this Committee to affirmatively decide that the number of participants has absolutely nothing to do with either the original purpose or the future promise of reclamation law. We join with the Farm Water Alliance in recommending deletion of the limitation on line 16.

Section 203(d) lines 18-24, page 5 and lines 1-2, page 16; ABC respectfully urges the deletion of this provision in its entirety. We find no reason for the Secretary to make such computations nor to utilize them in any constructive way in the implementation or administration of the proposed legislation.

In the sense of continuing to eliminate unnecessary requirements on the Administration and more importantly, the People, we request this Committee's favorable action on this deletion.

With respect to Title III, we believe that the Farm Water Alliance amendments clarify and qualify the Leasing and level of lease oversight appropriate to the changes embodied in S.1867. ABC urges this Committee to give these amendments your favorable consideration.

ABC commends this Legislation and the amendments discussed as the logical, equitable extension of the concept which has fulfilled the promise of 1902. The West is colonized, our communities and our industries are vital, participating and contributing elements in and to the social and economic well-being of this Nation.

We ask that this Congress recognize the success your predecessors unleashed through enactment of the Hansbrough-Newlands Act. We urge you to expand upon that success story through the provisions and amendments presented to you by the Farm Water Alliance, and by the Agri-Business Council on S.1867.

Thank you for this opportunity to comment.

The CHAIRMAN. Thank you. Mr. Choules.

STATEMENT OF TOM CHOULES, ON BEHALF OF THE WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT, NORTH GILA VALLEY, UNIT B, YUMA AND YUMA-MESA IRRIGATION AND DRAINAGE DISTRICTS, ACCOMPANIED BY CLYDE GOULD, SECRETARY-MANAGER, WELLTON-MOHAWK IRRIGATION AND DRAINAGE DISTRICT

Mr. CHOULES. Mr. Chairman, my name is Tom Choules. I am an attorney representing the five irrigation districts which appear on my statement.

All five are Federal reclamation districts in the area of Yuma, Ariz.

As I read S. 1867, it appears to me it is the intent that all of the provisions of title I become self-executing, except with the possible exception of section 107 which requires a contract for the use of excess water.

It seems to me those should not require an amendment of a contract to make them available to the farmers in the area. If that is not the case, I think that ought to be made the case so that no contract would have to be amended to take advantage of the residency repeal, to take advantage of the various exemptions that are expressed or to take advantage of any of the other provisions that are in title I.

As I look at title II, it says you must amend your contract to take advantage of that title. I would hope that would also be modified so that the individual farmer could elect to come under title I or II by his own election without acquiring an amendment of his contract. I do not believe that would be an administrative burden. I do believe unless that is possible, you are going to find the advantages of title II perhaps unavailable to most of the irrigation districts.

I believe the western farm family is generally larger than most of the farm families in the East or the nonfarm families.

In my own instance with my six children, I could own 12,080 acres under the present law and get water to it.

I agree with you, Mr. Chairman, that the application of a farm unit limitation is perhaps in most instances not a liberation or a liberality of the provisions of the law but is in fact going to be more restrictive.

I hope we would not put ourselves in a position where those few who could make use of that are limited from doing so because it does not apply to the other members of the farming community in that particular district.

I would hope the consent-to-sue provision would have an amendment that would make sure it does not remove the effects of the McCaren amendment, to allow a water right adjudication to utilize the State court.

I believe the intent is that those who are parties to a contract should bring that suit in the district court where the district is located. I think that is advantageous so they do not have to shop around back East to find a favorable court and then bring the suit there as has been done many times in the past, but I would not like to see that affect the right we now have under the McCaren amendment in the adjudication of water rights.

I believe a simple amendment could take care of that.

I am concerned about the rehabilitation and betterment provisions of section 106(a). I do not believe in the past it has been the understanding of that act that it is a construction obligation that brings you under the acreage limitation. That has always been an operation and maintenance provision; signing a rehab contract did not bring the acreage limitation into effect.

I think section 106(a) is a step backward in that regard. I would hope that provision would be eliminated from the bill before it is passed.

I am concerned about the full-cost provision. The districts I represent do not have any power revenues or any other revenues to assist them in making repayment.

In 1979, 32 percent of the funds that went into the reclamation programs came from the reclamation fund. The United States did not borrow those moneys. They did not pay interest on those funds. Most of the rest of the moneys that the United States used in that particular year and as has been true in almost every year, have come from nonborrowed moneys.

No one has suggested to me that my income tax is going to be refunded because the United States has borrowed it.

I believe the intent is that out of the deficit in that particular year, $30 billion out of $500 billion, is funded by the sale of Treasury notes or other items. Those are the funds on which the United States pays interest.

Why should we conclude that all the borrowed moneys went into reclamation or that we have to repay the United States what it pays for interest when in fact only about 6 percent of those funds went into reclamation? The subsidy is not truly borrowed money.

If you look at my statement, I have copied an article written by Maurice Langley which goes into more detail.

Full cost to the United States has to be calculated on some basis other than that interest which the United States pays on what it borrows.

I would hope that full cost could be redefined in that area so that we do not find ourselves paying U.S. interest on moneys it has in fact not borrowed.

Mr. Chairman, I believe it was your comment at the committee markup on S. 14 when you pointed out that Health, Education and Welfare had just found out they had lost $7 billion which you pointed out was more money than had been expended at that time in the entire reclamation program.

I remember Senator Church's comment to you that he was sure Joe Califano would find some way to buy a computer that would find out where those moneys went. I believe your response was, yes, and in all likelihood the computer would cost more than it would recover.

I think in truth and in fact reclamation is one of the very few projects that has been funded by the Federal Government that has returned more to the Treasury than it has cost. Almost to the $7 billion Secretary Watt commented on this morning, those were the funds generated in 1980. I think the studies will reflect those funds have turned over five times and that would be $35 billion generated in income upon which taxes would be levied in that 1 year alone. That is about five times more money than had been spent on the entire reclamation program from 1902 to that time.

It seems to me that full cost ought to be redefined in view of some of these great benefits.

I would also like to suggest that if the acreage figures you have used in your bill are put into effect, the 1,600 acres plus the additional 1,600 acres for leasing, then the interest rate does not become as important because almost all of the farmers in the area would be well taken care of.

If that is not the case, I think the Engle formula which you have passed in previous legislation ought to be put back into effect, the interest rate ought to be that which was in effect at the time the funds were expended for the benefit of the district and the United States rather than current interest rates which are far too high.

I remember when I borrowed money to build a home a few years ago. I was offended when I had to pay 6.25 percent interest. That looks pretty good today. If somebody suggested to me today when I planned that house and I borrowed those funds and constructed it that I would have to then worry about paying 13 or 15 percent interest rate in 1981, I obviously would have built a different home.

I think that is the position you are going to put these farmers in if you use the current interest rate applicable on funds which were expended maybe 20, 30, or 35 years ago. No one has suggested that if those funds had not been expended then that they would still be available for use now, at least no one I have had any familiarity with thinks the Government carries over those kind of moneys from year to year.

I would like to commend you, Mr. Chairman, on the liberality of the acreage limitation, liberality in the sense that today maybe 1,600 acres is not needed but it has taken us 79 years to amend the 1902 act.

Interest rates are accelerating and inflation is accelerating and the 1,600 acres today may not be a sufficient base over which to spread the costs of a farming operation a few years from now.

I would hope you will be able to maintain the acreage figures you have in your bill. I think they are very fair not only to the farmer who I understand we are trying to protect in large measure under this legislation, but surely to the United States and the ultimate consumer who is the ultimate beneficiary of good farm prices.

Thank you.

[The prepared statement of Mr. Choules follows:]

U. S. SENATE COMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT
Hearings, December 10-11, 1981
Washington, D.C.

My name is TOM CHOULES, and I am an attorney and appear on behalf of the Wellton-Mohawk Irrigation and Drainage District, North Gila Valley Irrigation District, Unit B Irrigation and Drainage District, also known as the Yuma Auxiliary Project, the Yuma Irrigation District, and the Yuma-Mesa Irrigation and Drainage District. I am accompanied by Clyde Gould, Secretary-Manager of the WelltonMohawk Irrigation and Drainage District. All five districts are federal reclamation projects in the vicinity of Yuma, Arizona.

I recognize that these hearings are built upon the hearings and actions in the last Congress resulting in S.14, and that you have indicated that that record will be reviewed and the statements that were prepared for that need not be repeated here. I would, however, like to call your attention to the statements that were submitted by myself, Thomas M. Howell, Robert F. Woodhouse, James R. McElhaney, C. L. Gould, Logan Brimhall, Jimmy Naquin and John R. Wright and others, and would request that those statements, as submitted at the hearings in 1979, be incorporated into your record for these purposes.

S.1867, the primary bill before this Committee, approaches many of the problems created by the 1902 Reclamation Act as it relates to modern day technology, expenses and development.

Residency seems to have been well handled and the language would make it clear that residency is no longer a requirement of the law. It has been the practice, as well as the belief of everyone, that since 1926, and many instances earlier than that, that has not been a requirement of the law in any event.

Equivalency is a problem that is basically those of areas where they have short growing seasons, limited soil characteristics, crop adaptability, costs of crop production, but there are also areas that have limited water supplies and very undependable water supplies, and I believe that those ought to be built into the equivalency formula.

Section 103 on recordable contracts, we believe that the act should specify that a 10-year recordable contract should be utilized. That has been the practice over many, many years, has worked well and we think that this ought not be a discretionary matter, except as to those matters which interfere with the proper development of lands, or any other matter that might involve the use of the recordable contract provisions. There are sometimes instances when the one-year limitation might pose a burden on the landowner through no fault of his own. We think there ought to be some provision that would allow the Secretary some discretion to extend that period of time if, through no fault of the landowner, a recordable contract cannot be executed within that period of time. We do not believe it was the intent of the act to only cover recordable contracts executed pursuant to the terms of the Act, but all recordable contracts properly executed. Perhaps that provision should be changed to accomplish that purpose as well. I am sure the intent is to allow those who have already signed recordable contracts the privilege of increasing their acreage which they wish to keep pursuant to the provisions of the act, and the act should provide that those who have executed recordable contracts can now go back and remove from those contracts such acreage as would now be allowed under the law, as passed pursuant to the terms of this act.

I will not comment on the Corps of Engineers language under Section 104, except to urge that accommodations be made to meet the purposes of the provision by clearing up some of the language perhaps, so that those who have lands in areas where water is received from a Corps of Engineers' project that was not intended to be covered by the act, or for which repayment has been completely made, or any other provisions that would make it an act of Congress specifically applicable to those lands and not one by mere interpretation.

Section 105 on leasing. It is the interpretation of almost all attorneys familiar with Federal reclamation law that the present law allows 160 acres owned in a single ownership and that that is an owned requirement and not a leasing requirement. That there is no limit on leasing per se. There have been no specific instances of any great consequence cited to this committee by anyone with whom I am familiar that shows any abuse of this process. Almost every lessee of lands who has the ability to operate the lands properly can pay a higher rental to the family farmer than a lessee who is an inefficient operator. Any limit that you place on leasing has to place the burden squarely on the family farmer whom I understand you are trying to protect. Therefore, it seems to me that the option allowing for ownership of the 160 acres and unlimited leasing is a proper viable provision, adequately handled for the past 79 years, and that the provision that allows unlimited leasing under those conditions ought to be continued without any limitation on either cost or anything else, since the beneficiaries of such a provision are the qualified landowners within the Federal reclamation projects.

Section 106 applicability has caused some problems as it relates to payout. There is some belief that the language of the bill would apply prospectively only. It is obvious that if a district has been paid out in the past, that the provisions ought to apply to it, and I would suggest that the language be amended to make that very, very clear. It would be unfair to say that those who payout after the act are free of the limitation, but those who have paid out prior to the act are not. I believe the language is sufficiently clear for me, but it poses some problems for others. Since it is obvious the intent is to provide that the limitation cease on payout, it would be a simple matter to provide language that that includes those paid out prior to the effective date of the act, as well as those subsequent to it. I believe a simple statement to that effect would be proper.

Under 106(a). For the first time under reclamation law, rehabilitation and betterment contracts would bring the federal reclamation project under land limitation. Rehabilitation and betterment contracts have always been deemed operation and maintenance. A district has in effect worn out and requires some repairs and modification which are paid as a matter of operation and maintenance by assessments on the district. The language should be modified, or removed in its entirety so that the past practices of rehab contracts do not bring the land limitation provisions back into effect. I believe that Section 106(a) should have that provision eliminated completely that refers to the Rehabilitation and Betterment Act provisions. I would suggest striking all of the language after the word "provided" in line 13, page 7, through the words "provided further" on line 24.

I would urge the continuance of the language in 106(b) for bona fide religious or charitable organizations, as there is no way to spread the benefits of reclamation projects as widely or as broadly as usage by these various projects, so long as the proceeds from the land or the proceeds of the sales are used for charitable purposes. I think this is an admirable use of reclamation lands to benefit the most people.

Section 106(c). It is well that your determination of beneficiaries applies to whatever type of fiduciary capacity is holding title to the lands be spread over those who are in fact the beneficiaries. I think this in fact is the way the law should be interpreted, and this will help to clarify that point.

Section 106(g) is intended to cover those lands which are supplied with an irrigation water supply requiring them to reduce their pumping in the same amount that they take water from the federal reclamation project, but whose contract provides that if that water is ever required for municipal and industrial use, it can be taken away from those irrigated lands. To expect a farmer to not be able to utilize any more water than he then has and to have that subject to having to sign a recordable contract, dispose of his lands and not reduce the underground pumping which is causing a deficit of water in his area, is unreasonable. We think that such a provision is necessary and would only suggest that perhaps in those cases where the word "temporary" is used, it might be deemed to be a "replacement supply" or "interruptible supply" of irrigation water, since that is in effect what the contract to take water temporarily for irrigation purposes is intended to be.

Section 107. We have many areas in the country where groundwater replacement is a purpose of irrigation water in addition to water quality, municipal and industrial uses. We suggest that perhaps that language might be added to Section 107.

Section 108. Validation is a means whereby Congress can approve certain acts that have taken place that have in effect had influence upon various contracting entities in which some subsequent federal official has declined to follow. We believe that the language perhaps could stand some technical clarification. I think the concept is excellent and should be continued in the act.

Section 109. The consent to sue provisions, of course, should be as broad as possible for the United States with its supremacy clause should not be allowed to take advantage of its citizens by refusing to be sued to require it to do what it has in effect stated that it would do. We again think that some technical language in the act could be added to that provision and thereby strengthen the same, but the purposes of that provision are excellent and should be followed.

I strongly feel that one of the most important issues of this consent to sue provision is that it not be deemed to amend or modify in any way the McCaren Amendment. The intent of that act was to allow you to proceed in State courts, the State of the most convenient form for almost all such suits, to adjudicate water supplies and water allocation, leaving that again up to the States Courts, which has been the firm decision that Congress has made many times. We think that perhaps there ought to be language added to this provision that makes sure that it does not interfere with the intent and purposes of the McCaren Amendment.

Section 201(d). The term "full cost" is probably the most crucial of any provision in this act outside of the basic land holding entitlement. It has always seemed strange to me that the federal subsidy, so called, meaning the interest free monies which have been furnished for the construction of reclamation projects, should be treated so differently from any other so called subsidies. For instance, if you can name me one area that has created more income for the United States, in addition to repayment of the principal, than has the operation of federal reclamation projects, I should like to hear it. The funds are not borrowed by the United States, for the most part, that go into reclamation projects. Many people talk about "federal water" being delivered through these federal reclamation projects. Nothing could be farther from the truth. The water that is delivered to the districts that I represent is

Colorado River water, that portion of which, allocated by the Santa Fe Compact and ultimately decided by the Supreme Court in Arizona vs. California, is part of Arizona's share of the Colorado River and is not federal water. This water is contracted for with the Secretary of Interior, pursuant to federal and state law, but is not federal water.

There have been many misconceptions stated about the impact of a federal subsidy.

For ease in reading, I recite here the Reclamation's SoCalled "Irrigation Subsidy", as drafted by Mr. Maurice N. Langley of BookmanEdmonston Engineering, Inc.

> Reclamation's So-Called "Irrigation Subsidy"
>
> A "subsidy", as defined in Webster's Collegiate Dictionary, is a "grant or gift of money" or "a grant by the government to a private person or company to assist an enterprise deemed advantageous to the public." (emphasis added)
>
> By this definition, the amount of any federal subsidy is technically and logically the total net outflow of funds from the U.S. Treasury for a given purpose, and as a maximum is not more than if the total funds for that purpose were an outright grant. Considering the realities of cash flow through the U.S. Treasury and the sources of funds for Reclamation project(s) financing, it seems obvious that there is no sound basis for computing the "irrigation subsidy" based on a hypothetical "interest on a loan."
>
> In tracing cash flow through the U.S. Treasury in broad terms, one finds that the fiscal year 1979 National unified budget approached $500 billion of which it is estimated that all but approximately $30 billion (approximately 6 percent of total) was available out of current fiscal year income. The $30 billion deficit was raised by the sale of U. S. bonds and notes on which there will be an interest cost to the Treasury.

There is no reason or logic in assuming that Reclamation's appropriations are made only from funds raised by sale of U. S. Treasury notes and bonds. In fact, a significant part of Reclamation's appropriations are made from a special "Reclamation Fund" which accumulates in the U. S. Treasury from various sources prior to being appropriated.

The balance of Reclamation's appropriations come from the Treasury's General Fund, of which approximately 6 percent, as indicated heretofore, is raised by sale of interest-bearing bonds and notes. For the five year period of fiscal year 1976-80 the total Reclamation construction appropriation will be approximately $2,463 million of which approximately $797 million (32 percent) will come from the Reclamation Fund and the balance from the General Fund. Approximately 45 percent of the Reclamation construction appropriations over the 5-year period will be allocated to irrigation.

To express the "irrigation subsidy" on the basis of costs to the U.S. Treasury, the same as the "subsidy" for any other federal program is expressed, one can accurately state:

> "The federal irrigation subsidy for a project is equal to the federal appropriation of funds allocated to irrigation for the project, minus the present worth of that project's irrigation repayment contract(s) and/or the construction component of water service contracts; plus the government's cost for interest on that portion of the appropriation from the General Fund (approximately 6 percent of total) which was raised by the sale of Treasury bonds and notes."

Computing the subsidy as "interest foregone" or "interest not paid" on the irrigation allocation, as has been done by some, may be a valid method of comparing the alternative costs of a federally financed Reclamation project and a private financed project. However, for a federal investment the results give an exagerated and erroneous picture of what is actually a rather modest subsidy, especially when one considers the many-fold returns to the Federal Treasury from this type of investment in renewable resources. Such subsidies truly fit Webster's definition of "an enterprise deemed advantageous to the public."

> The Federal Government, as a policy matter, has and will continue to finance certain of its programs from tax revenues in recognition of the benefits accruing to society as a whole. For example, the costs of a state university are typically not financed wholly by tuition, but rather a major portion thereof is borne by taxpayers in recognition of benefits to society. To compute "interest foregone" as part of the Federal subsidy to irrigation development is similar to a parent telling his child, after giving him $20,000 assistance on 4 years college education, that this subsidy actually amounted to $555,694 over the offspring's remaining 50 years average lifetime, because the parent had forgone 50 years of cumulative interest at 6-7/8 percent.

To give you a comparison of the economic impact of the Reclamation program, I have attached hereto, marked Exhibit "A", a copy of the 1976 Summary Report (reprinted from the Federal Reclamation Projects Water & Land Resource Accomplishments by the Department of Interior). You will note that this is updated only to 1975 but the net value of output on Table 10, page 58, shows $11,379.3 million with $7,148.6 million of personal income, $1,422.2 million of corporate profits; $2,808.5 million of non-tax base items; and $6,112.8 million of total wages and net farm income, consisting of 703.0 thousands of man-years.

The so-called federal subsidy, even if calculated, as I believe, erroneously on total "interest foregone", reflects a tremendous amount of excess income and taxes over the total Reclamation budget over the years. It is interesting to note that the loss in 1979, as noted by HEW, of $7 billion in misplaced funds, was greater than, at that time, the total Reclamation budget from 1902 to that time. It seems very odd to me that so much fuss would be made over a so-called irrigation subsidy which produces such revenues and benefits to the nation.

Therefore, to call them as subsidized or as federal water, or any other term, is, I think, incorrect. I believe that full costs should not be applied without some recognition and some provision for such type of funding. I am amazed that no one has suggested that Health, Education and Welfare payments ought to be repaid, although without interest, but repaid at all. That so called subsidies to other entities should be repaid at all, even though without interest. In this case, all of those funds allocated to irrigation are repaid by the irrigation district, and while they are not paid with interest, nonetheless the income to the federal treasury created by taxes far exceeds, in many instances, the total of principal, and most assuredly in all instances, the total of interest that would be charged on those funds. Therefore, I think that some great problem is created. In any event, it seems to me that any interest that is charged should be only that amount that was borrowed by the federal treasury and should be that which was in effect at the time the contract was signed, not at today's high interest rates, which is not applicable to those funds. If you could give me any assurance that had those monies remained in the federal treasury they would now be available for loaning out at high interest rates, I would be totally amazed.

Section 202, Amendments of Contracts, there ought to be some self-executing provision to these contracts that allows the family farmer to take advantage of the change in the law without going to the expense and amount of time consumed in getting the district's contract amended to make those provisions available to him. It seems to me that you could make this provision somewhat self-executing so that as a farmer finds himself subject to the availability of the benefits which this act extends to him, he can take advantage of that without having to go through the administrative costs of having his contract amended to provide for that. I would hope that you would be able to liberalize this provision to allow the individual farmer and the irrigation district who represents him the advantages of that type of a provision.

Section 203. I believe that 1600 acre figure is perhaps a little liberal on today's scale in some areas. However, since it has taken us 79 years to amend the 1902 Act, I think that area of liberality could well be extended to the benefits of the people it was intended to benefit. Therefore, I support the 1600 acre figure and suggest to you that it is not as broad as on first blush it may appear. There has never been an attempt to limit the size of business, unless it proved to be detrimental to competing businesses. The farmer probably is the only producer who has, for all practical purposes, absolutely no control over the price for which his product will be sold.

It sometimes takes a great deal of leverage to be able to even stay in business and on today's market, with increasing costs, with the inflexibility of the costs which you have to assume to stay in business, it seems to me that liberality ought to be extended to benefit the citizens of the United States who are willing to put their monies and their efforts into the farming enterprise. I would hope that the 1600 acres would be adopted.

Section 204. There is another provision that bothers me. Most of the reclamation repayment contracts do not provide for water service contracts, the so called 9E contracts, where repayment is made to the United States on an acre-foot basis, where operation and maintenance and repayment are charged on an acre-foot. The district that I represent and, as I understand it, about 75% of all of the contracts on reclamation projects, provide for each district to pay its own operation and maintenance expense, none of which are funded by the United States, and in all of the districts that I represent, an assessment is made on each acre for its share of the repayment obligation, not based upon an acre-foot charge, I do not believe that the act, as drafted, covers those matters and I believe that it should. Obviously, it needs to cover both types of contracts so the operation and maintenance deficits funded, as applicable to those contracts which provide for that type of funding, is proper. But I would not think there would be any attempt to charge those districts that are paying on an acre basis to be charged in some way for funds which they are paying out in a different or require them to change that manner, since the obligations are being met in a timely fashion.

Again, I raise the same objections to "full costs" in this section, as I did in Section 201(d). I believe that you need to liberalize that provision, again, to allow the farmer to continue in business without great detriment to him. I would suggest to you that any element of full cost is going to reflect eventually against the landowner who is going to lease his land out, the family farmer you are trying to protect. There is only so much money that a lessee can pay for land and stay in business. If he can't lease the land for that price, he goes out of business. Therefore, the ultimate burden is going to rest upon the landowner who wants to lease his land for a cash rental to help him in his operation and will be unable to do so at fair rate. If that land is being leased to those good operators who could afford to pay more and would take better care of his land, but for the full cost provisions can no longer afford to lease that land, the family farmer is the loser. I believe that the cost of administrating the full cost program will exceed to the United States and to the districts who are administrating the program any benefits that would be derived from assessing such costs.

Section 203(d) again comes back to my objections to the failure to differentiate between the 9D and the 9E contracts. We have no intent nor purpose served in charging on an acre-foot basis for repayment obligation on a duty to water or other acre foot charge, since those are being paid on an acre by acre basis, and we believe that this provision again does not apply to more than 75% of the reclamation project contracts for repayment.

Title III, Section 301, I believe does not recognize the fact that in many farming areas, there are many short term leases for one crop only, most of which are not in writing and most of which would not fit within the frame work of the provisions of this bill intended to cover them. For instance, why should one have to certify that he is leasing lands that fall within the available landholdings to be leased without the application of full costs or any other provisions. Should not the certification be required only of those who are leasing lands that require the knowledge to the Secretary so that he can determine whether or not they come under any of the applicable provisions of the act. There ought to be a complete exemption of all of those that do not fall and, of course, if the provisions are not complied with under the terms of the act, they can always have their water cut off, which is, I think, is the most serious detriment that could be applied to them, and I think that some provisions ought to be made on this to liberalize it, again, to ease in the cost of administration which would serve no valid purpose.

I appreciate the opportunity to submit this statement to the Committee and urge the rapid passage of this bill, so that we don't get caught into the second session of the Congress and an election year and have a difficult time in getting a bill passed which is long overdue and which most of the provisions of this bill would assist in relieving problems that have been created by a long, outmoded law.

My congratulations and commendations to those of you who are aware of the problems and my full faith in you to resolve them favorably to the people you represent.

75th Anniversary Year

1976 Summary Report

Report from:
Federal Recla
Projects
Water & Land
Accomplishm

Economic Impact of the Reclamation Program

U.S. DEPARTMENT OF THE INTERIOR

Cecil D. Andru

BUREAU OF RECLAMATION

R. Keith Higgin
Commissioner

conomic Impact of the Reclamation Program

ince 1902, the Federal Reclamation rogram has helped develop the ational economy. The direct benefits f irrigation water, hydroelectric ower, municipal and industrial water upply, and other aspects of the pro- ram are well known. However, there re indirect benefits which are not as adily apparent. Among these are e increased Federal internal reve- ues generated by economic activity ssociated with established projects.

uch indirect benefits demonstrate e overall national impact of the eclamation program. With this in ind, the Bureau of Reclamation con- acted with the Denver Research stitute of the University of Denver develop a methodology for esti- ating such impacts and to make timates for the years 1971-1975.[1]

order to determine tax revenues cruing to Federal, State, and local vernments, it is necessary to esti- ate the increase in business activity d the associated taxable personal ome and corporate profits. Addi- nal man-years of employment also e associated with the increased onomic activity and were developed illustrate more completely the erall impact of the Reclamation ogram.

cording to the study, over $11 bil- n in increased business activity sulted throughout the Nation in 5 from all functions of the Recla- tion program. It is estimated to e generated sufficient income and rporate profits to add $1.8 billion in ernal revenues to the Federal easury and over $900 million in es to State and local governments.

Table R—Net Increase in Business Activity, Tax Revenues, and Employment Attributable to Reclamation Projects, 1971-75

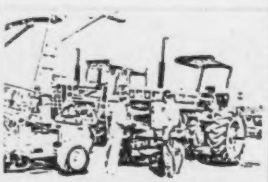
	Net Increase in Business Activity	Federal Internal Revenues	State and Local Taxes	Man-Years
	(millions)	(millions)	(millions)	(thousands)
1971	$ 6,863	$1,156	$495	586
1972	7,705	1,297	582	592
1973	9,511	1,529	793	658
1974	10,912	1,762	909	736
1975	11,379	1,833	935	793

The employment equivalent of the increased wages and net farm income is estimated to have totaled over 700,000 man-years in 1975. These impacts are summarized in table R along with results for 1971-1975.

Two significant factors are involved in estimating impacts of Reclamation projects: attribution, or the accurate assignment of credit; and multiplier effects—deciding where to cut off measuring the sequential impacts which can be traced to the various projects. Both are complicated by the many interrelationships among economic activities.

While Reclamation projects stimulate business spending and factory payrolls, it is difficult to isolate the effects of the projects from those of other known and unknown causes. Nevertheless, Reclamation projects have contributed to the growth of the economy by directly and indirectly increasing total output and incomes.

The net effect of the Reclamation program on the national economy is clearly different from its effect on States or the particular area in which a project is located. If a national viewpoint is taken, the economic impacts of direct project output and the spending essential to achieve it can be considered in the computation of impacts. In measuring regional effects, some impacts which occur outside the smaller areas are not identifiable. Therefore, a national viewpoint seems appropriate, because Reclamation is concerned with the welfare of the entire Nation. Although Reclamation is localized in the 17 Western States, its effects extend far beyond that area.



Retail farm equipment sales.

While a number of methodologies were considered during the study, the one which was adopted is national in scope and considers only the net additions to output, as opposed to transfers from other sectors of the economy.

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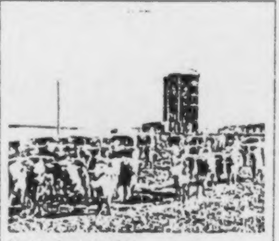
[1] Gordon Milliken, Loretta C. Lohman, and ben A. Zubrow, *Economic Impact of* *eral Reclamation Projects*, January 1977, pared by the Denver Research Institute, versity of Denver for the Bureau of lamation, U.S. Department of the Interior

six major types of output from lamation projects used in the mating procedure are: direct lamation spending, net output agricultural water, municipal er, industrial water, hydroelectric er, and recreation. Most of these c output measures are available ually through normal Reclamation rting channels. The remaining sures can be calculated or esti- d from other data. A survey was l to derive the estimates of gross ipts of firms dependent on lamation water or power since e data were not available through lar Reclamation procedures.

talo processing plant.

Only the direct and resulting first-round indirect impacts from these outputs are estimated in the study. The income and employment multiplier effects, which are important but difficult to justify when taking a national viewpoint, are excluded from the quantitative measures.

Emphasis was placed on payrolls and net profits which generate Federal internal revenues. Additional sources of Federal income, such as excise taxes, or income taxes on rents, royalties, and capital gains, are excluded in order to bring consistency to the method and to avoid debate over the inclusion of certain types of tax revenues. A standard ratio of income taxes (15 percent) to gross income has been used which simplified the procedure and made it more adaptable to the computer. A standard ratio of 40.7 percent was used to estimate income taxes from corporate profits. Both ratios are based on known national averages.


Livestock production.

Expenditure profiles which convert receipts into wages, profits, and purchased inputs were developed for farmers, Reclamation contractors and suppliers, agricultural suppliers, utilities, and firms dependent on Reclamation water or power. However, these profiles alone are not adequate to estimate wages and profits. Certain expenditures typically are made at the retail level, others at the wholesale level, and still others at the manufacturer level. Therefore, for each major category and subcategory of expenditure, it was necessary to determine where the expenditure occurred.

It also was necessary to identify the major types of businesses—retail, wholesale, or manufacturing—which accounted for the bulk of the spending at the preceding level. Taxable wages and corporate profits are then estimated for each of these business sectors. This elementary input-output technique was necessary because certain types of businesses have small labor costs as a percent of total sales.

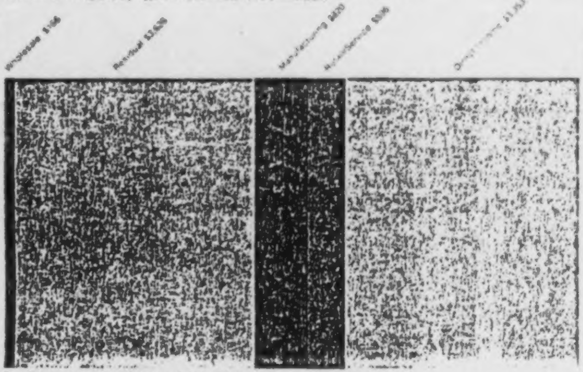
This allocation to business sectors accounted for a large portion of the total expenditures with the balance placed in a residual category. Since little is known about this residual, it was assumed to be comparable to the national distribution of private income to personal income, corporate profits, and other nontax-base items. Figure 8 illustrates the distribution of personal income and corporate profits by major levels of business for 1975. Direct income includes wages and profits of firms directly dependent on Reclamation water or power and includes, for example, net farm income, and wages and profits of electric utilities.

Table S—Federal, State, and Local Tax Revenues Attributable To Reclamation Projects, 1971-75

Type of Taxes	1971	1972	1973	1974	1975
			(millions)		
Federal					
Personal Income	$ 655	$ 736	$ 904	$1,039	$1,072
Corporate Profits	392	437	494	571	606
Indirect Business	109	124	131	152	155
Subtotal	$1,156	$1,297	$1,529	$1,762	$1,833
State and Local	495	582	793	909	935
Total	$1,651	$1,879	$2,322	$2,671	$2,768

Distribution of Income and Profits from Economic Activity Associated with Reclamation Projects by Types of Business, 1975 (millions)

Figure 8



Total Personal Income and Corporate Profits $9,571

The basic purpose for developing expenditure profiles for distributing the expenditures to various levels an to various industrial categories, and for allocating the residual amount, was to develop an estimate of wage and profits from Reclamation-relate activities. Wages and profits represe the tax base used to compute added tax revenues resulting from the Reclamation program. Estimates of these added revenues are summariz in table S for the years 1971 through 1975.

Tables T through X summarize the estimates of income and employmen generated by economic activity associated with the Reclamation program from 1971 through 1975. N value of output includes both tax-ba items such as personal income and corporate profits, and nontax-base items such as depreciation, indirect business taxes, transfer payments, and payments for land purchases. Personal income consists of wages, interest, rents, and noncorporate profits. Only wages and net farm income to farm proprietors were use to calculate the number of jobs generated. A substantial amount of the additional economic benefit fron Reclamation projects appears in the form of nonwage income such as corporate profits, noncorporate profits, interest, and rents. Although this nonwage income will, through investment and consumption spend ing, stimulate employment through the economy, the amount of the resulting employment cannot be accurately estimated. Therefore, estimates of these impacts have not been included.

Table T—Net Increase in Business Activity, Total Wages, and Employment Attributable to Reclamation Projects by Type of Activity.

Type of Output	Net Value Of Output	Total Tax Base		Nontax-Base Items	Total Wages and Net Farm Income	Ma Ye
		Personal Income	Corporate Profits			
			(millions)			(thous
Agriculture	($2,400.4)	($1,625.7)	($242.7)	($532.0)	($1,369.0)	(25
Net Crop Production	1,299.7	932.1	94.1	273.5	767.2	151
Livestock	273.8	192.9	19.0	61.9	68.6	1
Food Processors	826.9	500.7	129.6	196.6	533.2	8
Municipal and Industrial Water	($1,920.7)	($1,239.0)	($361.8)	($319.9)	($1,096.1)	(16
Retail Sales	93.8	48.9	5.6	39.3	15.8	1
Output of Water-Dependent Industries	1,826.9	1,190.1	356.2	280.6	1,080.3	16
Hydroelectric Power	($ 956.0)	($ 422.3)	($171.8)	($361.9)	($ 313.5)	(4
Retail Sales	697.9	265.6	137.7	294.6	94.7	1
Output of Power-Dependent Industries	258.1	156.7	34.1	67.3	218.8	3
Recreation Spending	245.9	164.3	25.5	56.1	141.1	2
Capital Investment	867.7	578.9	87.4	201.4	499.5	7
USBR Direct Expenditure	472.1	335.5	30.5	106.0	310.7	3
Total	$6,862.8	$4,365.8	$919.7	$1,577.3	$3,729.9	56

Table U—Net Increase in Business Activity, Total Wages, and Employment Attributable to Reclamation Projects by Type of Activity

Type of Output	Net Value Of Output	Total Tax Base		Nontax-Base Items	Total Wages and Net Farm Income	M Ye
		Personal Income	Corporate Profits			
			(millions)			(thou
Agriculture	($2,862.8)	($1,935.6)	($ 291.6)	($ 635.6)	($1,618.2)	(2
Net Crop Production	1,515.7	1,086.7	109.9	319.1	894.0	1
Livestock	335.5	236.3	23.2	76.0	84.1	1
Food Processors	1,011.6	612.6	158.5	240.5	640.1	
Municipal and Industrial Water	($2,102.1)	($1,355.1)	($ 395.0)	($ 352.0)	($1,198.8)	(1
Retail Sales	109.6	57.1	6.5	46.0	18.4	
Output of Water-Dependent Industries	1,992.5	1,298.0	388.5	306.0	1,180.4	1
Hydroelectric Power	($1,010.5)	($ 442.5)	($ 182.7)	($ 385.3)	($ 327.1)	(
Retail Sales	755.1	287.4	149.0	318.7	102.5	
Output of Power-Dependent Industries	255.4	155.1	33.7	66.6	224.6	
Recreation Spending	247.9	165.9	25.7	56.3	142.5	
Capital Investment	994.4	663.4	100.2	230.8	572.5	
USBR Direct Expenditure	486.9	344.5	31.3	111.1	318.8	
Total	$7,704.6	$4,907.0	$1,026.5	$1,771.1	$4,177.9	5

Table V—Net Increase in Business Activity, Total Wages, and Employment Attributable to Reclamation Projects by Type of Activity, 1973

Type of Output	Net Value Of Output	Total Tax Base: Personal Income	Total Tax Base: Corporate Profits	Nontax-Base Items	Total Wages and Net Farm Income	Man-Years
			(millions)			(thousands)
Agriculture	($4,420.6)	($2,949.2)	($ 438.2)	($1,033.2)	($2,493.3)	(338.0)
Net Crop Production	2,391.6	1,703.8	167.4	520.4	1,412.2	194.3
Livestock	343.6	239.0	20.8	83.8	85.1	12.5
Food Processors	1,685.4	1,006.4	250.0	429.0	995.0	131.2
Municipal and Industrial Water	($1,964.6)	($1,253.9)	($ 342.5)	($ 368.2)	($1,117.7)	(146.7)
Retail Sales	117.3	60.1	7.1	50.1	19.7	1.9
Output of Water-Dependent Industries	1,847.3	1,193.8	335.4	318.1	1,098.0	144.8
Hydroelectric Power	($1,151.8)	($ 510.0)	($ 201.2)	($ 440.6)	($ 381.8)	(44.2)
Retail Sales	801.3	301.0	158.7	341.6	108.7	10.2
Output of Power-Dependent Industries	350.5	209.0	42.5	99.0	273.1	34.0
Recreation Spending	253.4	165.4	27.2	60.8	142.1	18.7
Capital Investment	1,244.8	812.2	122.6	310.0	700.9	81.1
USBR Direct Expenditure	475.7	336.2	28.3	111.2	313.1	29.1
Total	$9,510.9	$6,026.9	$1,160.0	$2,324.0	$5,148.9	657.8

Table W—Net Increase in Business Activity, Total Wages, and Employment Attributable to Reclamation Projects by Type of Activity, 1974

Type of Output	Net Value Of Output	Total Tax Base: Personal Income	Total Tax Base: Corporate Profits	Nontax-Base Items	Total Wages and Net Farm Income	Man-Years
			(millions)			(thousands)
Agriculture	($5,185.7)	($3,441.6)	($ 531.2)	($1,212.9)	($2,981.2)	(382.7)
Net Crop Production	2,919.7	2,078.1	204.3	637.3	1,781.9	233.0
Livestock	106.5	74.1	6.4	26.0	26.7	3.7
Food Processors	2,159.5	1,289.4	320.5	549.6	1,172.6	146.0
Municipal and Industrial Water	($2,264.6)	($1,446.5)	($ 395.8)	($ 422.3)	($1,289.4)	(159.8
Retail Sales	126.8	65.0	7.7	54.1	21.3	1.9
Output of Water-Dependent Industries	2,137.8	1,381.5	388.1	368.2	1,268.1	157.9
Hydroelectric Power	($1,185.6)	($ 522.4)	($ 208.1)	($ 455.1)	($ 390.1)	(42.5)
Retail Sales	836.9	314.4	165.8	356.7	113.6	10.1
Output of Power-Dependent Industries	348.7	208.0	42.3	98.4	276.5	32.4
Recreation Spending	281.9	184.0	30.2	67.7	158.0	19.7
Capital Investment	1,425.3	929.9	140.4	355.0	802.6	95.0
USBR Direct Expenditure	569.3	399.0	35.5	134.8	369.9	35.9
Total	$10,912.4	$6,923.4	$1,341.2	$2,647.9	$5,991.2	735.6

Table X—Net Increase in Business Activity, Total Wages, and Employment Attributable to Reclamation Projects by Type of Activity, 1975

Type of Output	Net Value Of Output	Total Tax Base: Personal Income	Total Tax Base: Corporate Profits	Nontax-Base Items	Total Wages and Net Farm Income	Man-Years
			(millions)			(thousands)
Agriculture	($4,890.7)	($3,252.7)	($ 494.2)	($1,143.8)	($2,758.2)	(342.6)
Net Crop Production	2,786.9	1,982.3	194.5	610.1	1,643.7	215.3
Livestock	145.8	101.4	8.8	35.6	36.5	5.7
Food Processors	1,958.0	1,169.0	290.9	498.1	1,078.0	121.6
Municipal and Industrial Water	($2,429.5)	($1,554.9)	($ 427.5)	($ 447.1)	($1,386.1)	(155.7)
Retail Sales	112.3	57.5	6.8	48.0	18.9	1.5
Output of Water-Dependent Industries	2,317.2	1,497.4	420.7	399.1	1,367.2	154.2
Hydroelectric Power	($1,554.0)	($ 676.1)	($ 275.6)	($ 602.3)	($ 501.5)	(49.3)
Retail Sales	1,135.6	426.6	221.9	484.1	154.1	12.2
Output of Power-Dependent Industries	418.4	249.5	50.7	118.2	347.4	37.1
Recreation Spending	293.2	191.4	31.6	70.2	164.3	18.5
Capital Investment	1,467.6	957.5	144.5	365.6	826.5	92.1
USBR Direct Expenditure	744.3	516.0	48.8	179.5	476.2	44.8
Total	$11,379.3	$7,148.6	$1,422.2	$2,808.5	$6,112.8	703.0

The CHAIRMAN. Thank you very nuch.

Part of the philosophy of the bill has been to set the acreage limitation high enough to accommodate all of those practically and successfully farming the land today and over the immediately foreseeable future and at the same time if you are going beyond that, then indeed you must pay the full cost of the water delivered.

Your analogy with respect to building a house, I would question it since the question is not what house was built then but the addition to the house which you have an option to add now or not based upon the future interest costs. You have a choice.

We would not apply the interest costs to those who are under any existing law. It would be an added cost only for those who had exercised the option to avail themselves of that opportunity to farm more acres.

I understand that none of us want to enter into these long-term variable interest rate mortgages if you have a choice and we certainly would not want that to apply to old contracts in which we did not exercise that choice.

Mr. CHOULES. Mr. Chairman, I think most farmers are building for their families. I had two children when I built my home and I built it large enough to handle the size of family I expected to have. Most of the farmers I know are trying to acquire enough land so that their children and their grandchildren can farm knowing full well with increased prices they may not have the ability to do so later on.

The CHAIRMAN. I recognize that. I think one of the things an earlier witness referred to needs to be noted. For those who do not live in the community, Mrs. Parker mentioned the difficulty of adding to the farm unit. It is not simply having the authority to and immediately buying the land. You have to wait a considerable period of years for appropriate land in the locality that is available to purchase at any price and under any limitations.

I thank you both for your testimony.

I understand there are two witnesses in the next panel who were not able to attend but there are two who are here and they are Mr. Robert Fagerberg from Montana and Craig Winterburn also from Montana. It is Mark Etchart and not Bob Echart with Milk River Irrigation District, who is also here.

Mr. Fagerberg, you may proceed.

STATEMENT OF ROBERT M. FAGERBERG, REPRESENTING GREENFIELDS IRRIGATION DISTRICT, MONTANA, AND HEART MOUNTAIN IRRIGATION DISTRICT, WYOMING

Mr. FAGERBERG. Thank you, Mr. Chairman.

My name is Robert Fagerberg. I am representing the Greenfields Irrigation District of Fairfield, Mont., and also the Heart Mountain Irrigation District of Powell, Wyo. as well as being president of the Montana Water Development Association.

In view of the fact that we are trying to reduce the time spent here, I will just cover a few of the highlights of my testimony.

One of the things I think we should include in the modification of the 1902 act is also the Small Projects Act including the acreage limitations so that those projects built under the Small Projects Act would receive the same benefits.

It so happens that the extension service of Montana State University put out a study in 1978 on a 420-acre farm unit and the University of Wyoming at the same time put out a study on a 400-acre farm unit. These two studies represented two diverse types of agriculure in two separate areas. They both came up with the same conclusion, that you could not make a living on a 400-acre farm unit.

As far as we are concerned, I think S. 1867 more nearly meets our requirement for an economic farm unit than H.R. 4265.

I think as you pointed out so dramatically, we have to think about the future. I feel that the acreage limitations in S. 1867 are much more acceptable to us as far as the future generations are concerned.

We also feel the residency requirement must be repealed. Most of our projects in Montana and Wyoming are public land projects built under the homestead law, reclamation law, and the Homestead Act.

To get a patent to these lands, you have to have a cultivation proof and a residency proof. Once a man receives a patent, it states it is his to hold forever and to also pass on to his heirs.

We think any requirement of a residency, continuous residency is actually a conflict with the wording of the patent. We think they should have the rights as all other citizens to plan their estates and reside in the place of their choice and sell or lease the land as they choose.

We also feel unless we increase the amount of acreage on these farm units, we are going to develop less efficient farms and we would get less efficient farmers.

We support the class 1 equivalency factor. In our area, we have projects that vary from 100 to 150 days of frost-free season. We find this is a very short period of time to do your planning.

We actually see nothing wrong with a farmer making money. We think the size of the farm unit wherever it might be, whether it is in California, Arizona, Montana, or Wyoming, should be of sufficient size so that the farmer can realize a reasonable return on his investment.

We do have a little different opinion on title I and II than maybe Tom Choules has mentioned. Maybe this needs to be investigated.

Our concern is if you take a legal entity such as an irrigation district with a contract and individuals are allowed to choose between titles I and II, you could create quite an administrative problem for the district. I know others feel it is not this way.

We sort of wonder if this might not be a problem if titles I and II choice was left up to the individual.

We would hope everybody would be treated equally on acreage limitations. We do not agree with exemptions on the acreage limitations for religious or charitable organizations.

We have no objections to recordable contracts providing the landowner is allowed sufficient time to dispose of his land at market value.

We do support the leasing as being an integral part of project liability and we support no leasing limits as far as farmers are concerned.

We also support the removal of the limitations and restrictions imposed by Federal reclamation law upon the discharge of the repayment contract. Naturally we would support the validation of contracts, provisions that are contained within the contracts.

We support the right of any non-Federal party to contracts to sue to remedy any inequities which may arise as a result of a decision made by the Secretary or his representative regarding contract language.

I might point out the Heart Mountain Irrigation District is having some problems along this line at the present time.

We support the provision that any amendment of an existing contract shall not require opening any portion of the contract not affected by the repeal of the Reclamation Act, and in particular we would be concerned with title II if you had to open up the contract that the repayment portion might be affected. We think it should only affect those portions regarding the acreage limitation.

Full cost provisions we think should be based on acreage rather than on duty of water. We would agree with Tom Choules' philosophy on the interest rates regarding full cost payment.

We have to disagree with the statement that has been made that this is welfare water. We feel if all the money spent by the Federal Government was as well invested as in the reclamation program, I do not think we would have a national debt today.

There was a statement made yesterday by Mr. Blackwelder that subsidized water encourages inefficient use. I think we have to disagree with that statement. I do not think any efficient farmer purposely becomes inefficient.

For the sake of settling this issue, I think the knowledge and skills of Congress should be applied now to legislate a reform act of the 1902 reclamation law that recognizes current conditions and also allows for future revisions if required.

It is important that we do this now so that the projects and their farmers can direct their energies toward other concerns.

Thank you very much.

[The prepared statement of Mr. Fagerberg follows:]

STATEMENT OF
ROBERT M. FAGERBERG
REPRESENTING
GREENFIELDS IRRIGATION DISTRICT
FAIRFIELD, MONTANA
AND
HEART MOUNTAIN IRRIGATION DISTRICT
POWELL, WYOMING

PRESENTED BEFORE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

DIRKSEN SENATE OFFICE BLDG
ROOM 3110

WASHINGTON, D.C.
DECEMBER 10, 11 - 1981

STATEMENT OF ROBERT M. FAGERBERG

Introduction

Mr. Chairman, Honorable Members of the Senate Committee on Energy and Natural Resources, my name is Robert M. Fagerberg. I have been Project Manager for 32 years on irrigation projects in Montana and Wyoming. At present time I am Project Manager of the Greenfields Irrigation District, Montana, comprising 80,000 acres of irrigable land. I am also representing the Heart Mountain Irrigation District of the Shoshone Project at Powell, Wyoming, comprising 30,000 acres of irrigable land. I was Project Manager at Powell for 29 years. Concurrently with my regular duties, I have been an irrigation operation and maintenance consultant to the Governments of Thailand, Peru, Colombia and Turkey. In addition I have served as a consultant to the World Bank on irrigation matters to Indonesia on three separate occasions, the Subcontinent of India, Philippines, Turkey on two separate occasions and Yugoslavia. I am also President of the Montana Water Development Association.

We are pleased that this committee has chosen to hold hearings on the proposed repeal of Reclamation Act of 1902.

WE ARE OF THE OPINION THAT THE 1902 LAW MUST BE REWRITTEN TO MEET THE CRITERIA FOR ECONOMIC FAMILY-SIZE FARMS WHICH CONSIDERS ALL FACTORS OF SOILS, CLIMATE, GEOGRAPHY, MARKETING BARRIERS AND THE SOCIO-ECONOMIC WELL BEING OF COMMUNITIES. IT IS PRESUMPTIOUS FOR US TO ASSUME WHAT THE AUTHORS OF THE 1902 ACT WOULD DO, IF TODAY'S ECONOMY WAS IN EFFECT IN 1902. WE BELIEVE THE SENATE BILL S-1867 COVERS THE PROBLEMS ON AN IRRIGATED FARM UNDER TODAY'S CONDITIONS.

GREENFIELDS IRRIGATION DISTRICT DATA (80,000 ACRES)

1. 35 MILES NORTHWEST OF GREAT FALLS, MONTANA, FIRST WATER APPLIED IN 1920. LONGITUDE 111° LATITUDE 47°
2. AVERAGE FROST FREE SEASON 126 DAYS (ELEVATION 4300' - 3600' ABOVE SEA LEVEL) WHICH LIMITS CROPS TO HAY, GRAIN AND PASTURE.
3. ORIGINALLY ABOUT 60% OF AREA WAS ENTERED UNDER DESERT ENTRY ACT AND HOMESTEAD ACT, PRIOR TO IRRIGATION. AVERAGE SIZE FARMS OPENED UP UNDER BUREAU OF RECLAMATION WERE ABOUT 80 ACRES OF LAND, UP TO 120 ACRES. SOME WERE AS LARGE AS 160 ACRES ON LAND HOMESTEADED PRIOR TO IRRIGATION.
4. IN LATE 1930'S AND EARLY 1940'S, FARM SECURITY ADMINISTRATION CAME TO THE PROJECT AND BOUGHT UP LAND OF FARMERS WHO WERE FAILING AND SET UP 80-ACRE FARMS. THESE FARMS WERE DESIGNED TO PLACE MORE PEOPLE ON THE LAND WITH EMPHASIS ON NON-MECHANIZED FARMING. HOWEVER, IT WAS QUICKLY LEARNED

that the feed requirement for the horses did not permit the farmer to have enough produce to sell to keep his operation solvent. This plan failed and Farm Security changed farm size to 160 acres, the maximum size, and allowed use of mechanization.

5. Land speculation was never a factor in this area because people could find a better place to invest their money.

Land Values	1920-1930	$20-$35/acre
	1930-1950	$35-$80/acre
	1950-1960	$125-$200/acre
	1960-1970	$200-$350/acre
	1970-1981	$375-$1500/acre

Average Irrigable land sells today at about $1000/acre

6. Ownership Statistics (80,000 acres)

(A)	No. of Landowners 588	136	acres average ownership	
(1)	0-10 acres (owners)	78	13.27%	
(2)	11-40 acres (owners)	74	12.58%	
(3)	41-80 acres (owners)	116	19.73%	
(4)	81-160 acres (owners)	135	22.96%	54.4% of land owners own 85% of land - ave. 212 acres
(5)	161-320 acres (owners)	151	25.68%	
(6)	Over 320 acres (owners)	34	5.78%	
(B)	Landowner Operators	301	51.2%	
(C)	Landowners leasing to others	184	31.3%	
(D)	Small landowners who do not farm except for pasture for horses or subdivisions	103	17.5% of all landowners living on subdivision	

(E) Landowners with outside income 276 46.9% of all land owners

(F) Landowners with off project dryland and pasture 54

(G) Distribution of crops grown

Grain	53.13%
Alfalfa	28.07%
Pastures	13.10%
Fallow	2.78%
Farmsteads	2.46%
Misc. Crops	0.46%

7. Breakeven cost of production based on Montana State University Extension Service Study dated February, 1978, for crops produced in 1977 on the Greenfields District are shown below based on a 420 acre farm. Assume 300 acres of grain, 100 acres alfalfa and no livestock, interest rates on operating capital, 9%; machinery, 9%; real estate, 7%; diesel fuel, 48¢ per gallon; gasoline at 59¢ per gallon; 7% return on land investment. (This is a one-year study.)

A. Malting Barley

(1) Gross Receipts 70 bu. @ $2.20	$154.00/acre
(2) Variable costs, preharvest	95.70/acre
(3) Harvest cost	8.75/acre

(4)	BREAKEVEN PRICE, VARIABLE COSTS, BU.	1.492
(5)	FIXED COSTS	85.62/ACRE
(6)	TOTAL COSTS	$190.08/ACRE
(7)	BREAKEVEN PRICE, TOTAL COSTS, BU.	$2.715
(8)	LOSS BELOW BREAKEVEN COST, BU.	$0.51

B. WINTER WHEAT

(1)	GROSS RECEIPTS, 55 BU. @ $2.30	$126.50/ACRE
(2)	VARIABLE COSTS, PREHARVEST	92.58/ACRE
(3)	HARVEST COST	8.75/ACRE
(4)	BREAKEVEN PRICE, VARIABLE COST, BU.	$1.8242
(5)	FIXED COSTS	85.62/ACRE
(6)	TOTAL COSTS	$186.95/ACRE
(7)	BREAKEVEN PRICE, TOTAL COSTS, BU.	3.399
(8)	LOSS BELOW BREAKEVEN COST, BU.	$1.099

C. ALFALFA HAY

(1)	GROSS RECEIPTS, 4 T. @ $50.00	$200.00
(2)	VARIABLE COSTS, PREHARVEST	73.57/ACRE
(3)	HARVEST COST	23.39/ACRE
(4)	BREAKEVEN PRICE, VARIABLE COST, TON	24.349
(5)	FIXED COSTS	73.10/ACRE
(6)	TOTAL COSTS	$170.49/ACRE
(7)	BREAKEVEN PRICE, TOTAL COSTS, TON	42.624
(8)	INCOME ABOVE BREAKEVEN COST, TON	$19.25

OPERATING COSTS HAVE GONE UP A RATE OF 10%-14% PER YEAR SINCE THIS 1977 STUDY AND PRICES RECEIVED HAVE NOT ADVANCED.

3. OTHER FACTORS AFFECTING FARMERS IN GREENFIELDS IRRIGATION DISTRICT

A. IT BECOMES APPARENT FROM THESE FIGURES IN EXTENSION SERVICE STUDY OF 1978, THAT THE FARMER IS EXISTING ON HIS DEPRECIATION AND INFLATIONARY LAND VALUES WHICH ALLOW GREATER LOAN CAPACITY.

B. NEW INTEREST RATES FOR OPERATING CAPITAL - 1981

FHA 14.8%

BANKS 15% - 18%

C. NEW INTEREST RATES FOR MACHINERY 14-16% - 1981

D. NEW INTEREST RATES FOR REAL ESTATE MIN. OF 14% - 1981

E. FUEL COSTS - DIESEL/GAL 1.20 - 1981

GASOLINE/GAL 1.30 - 1981

F. ISOLATION FROM THE MARKET PLACE - MOST OF GRAIN PRODUCTION SHIPPED EITHER TO WEST COAST, MINNEAPOLIS OR IDAHO.

G. POPULATION TRENDS - STATE OF MONTANA

	TOTAL	FARM POPULATION	
YEAR	POPULATION	NUMBER	% OF TOTAL
1920	546,000	228,000	41.8
1930	538,000	205,000	38.1
1940	560,000	176,000	31.4
1950	591,000	136,000	23.0
1960	675,000	115,000	17.0
1970	694,000	90,000	13.0

H. FARM TREND - NUMBER OF FARMS-STATE OF MONTANA

	FARMS	ACREAGE AVG. OWNED
1910	28,800	
1920	57,700	
1930	55,000	
1940	44,500	
1950	37,200	1,747 ACRES
1960	31,700	2,104 ACRES
1970	26,400	2,432 ACRES
1978	22,900	2,712 ACRES

HEART MOUNTAIN IRRIGATION DISTRICT, POWELL, WYOMING DATA (30,728 ACRES)

1. LOCATED AT POWELL, WYOMING, PART OF SHOSHONE PROJECT - WITHDRAWN PUBLIC LAND OPENED TO HOMESTEADING IN 1946 - 215 FARM UNITS AVERAGING 107 ACRES - 1950-1981 GROSS IRRIGABLE ACREAGE INCREASED TO 30,728 ACRES BY AMENDMENTS, SALE OF ADJACENT PUBLIC LANDS AND RECLASSIFICATION
2. AVERAGE FROST FREE SEASON 135 DAYS (ELEVATION 4500' - 5200' ABOVE SEA LEVEL)
3. HEART MOUNTAIN DISTRICT WAS HOMESTEADED UNDER RECLAMATION LAW, UNDER THREE PUBLIC NOTICES (1946, 1947 AND 1949). THE FARM UNITS WERE INCREASED IN SIZE IN EACH SUBSEQUENT LAND OPENING BECAUSE IT BECAME APPARENT THAT THE FARM UNITS WERE NOT AN ECONOMIC SIZE.

4. Land speculation was not a factor in the development of Heart Mountain District.

Land Values	1948-1960	$125-$250/acre
	1960-1970	$250-$500/acre
	1970-1981	$500-$1500/acre

Average Irrigable land sells today at about $1200/acre

5. Ownership Statistics (30,728 acres)

(A) No. of Landowners 303 averaging 101 acres each

	Owners	% of accounts	% of land
(1) 1-30 acres	136	44.9	2.6
(2) 31-160 acres	91	30.0	29.3
(3) 161-320 acres	56	18.5	40.9
(4) Over 320 acres	20	6.6	27.2

(B) Landowner Operators 112

(C) Landowners leasing to others 55

55% of accounts own or lease 97.4% of land
Avg 179 acres ownership

(D) Small landowners - owning less than 30 acres with outside income 136

44.9% of accounts with outside income
average 6 acres ownership

(E) Distribution of Crops Grown

Grain Barley	41%
Alfalfa	15%
Bean (Dry)	15%
Sugar Beets	9.5%
Seed Crops	2.5%
Pasture	4.0%
Corn Silage	2.0%
Oats-Wheat	1.0%
Buildings-Roads	10.0%

Table 2. ESTIMATED PRESENT VALUES OF LAND AND IMPROVEMENTS, 400 acre farm, Powell area, Wyo., 1980

Item		Estimated investment requirement		
		Total farm		Per crop acre
Land:				
Irrigated crop land, 400 acres @ $1,200		$480,000		$
Farmstead, roads, waste, 20 acres @ 300		6,000		
Subtotal, land			$486,000	1,215
Improvements:[a]				
Shop		$ 20,000		
Machine shed		4,000		
Labor house		15,000		
Concrete ditch		5,280		
Labor house (beets)		5,000		
Livestock sheds		3,000		
Corrals and water system		4,000		
Fences		4,000		
Grain bins		4,000		
Subtotal, depreciable improvements			64,280	161
Operator's residence		40,000		
			40,000	100
Subtotal, land improvements			590,280	1,476
Vehicles[a]	27,750			
Tractors	39,000			
Equipment	96,750			
Subtotal, equipment			163,500	409
Total farm (land, improvements, residence, equipment)	$		753,780	$1,885

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a/ See Appendix Worksheets III and IV for estimated present values of specific improvement and equipment.

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Table 4. SUMMARY of TOTAL FARM RECEIPTS, COSTS and EARNINGS from ENTERPRISE BUDGETS, OWNER-OPERATOR SITUATION, 400 acre farm, Powell area, Wyo., 198
(70 acres malt barley after beets, 70 acres malt barley after grain, 45 acres alfalfa, 75 acres beans, 20 acres corn silage, 120 acres sugar beets).

Item	Yield/ acre	Price/ unit	TOTAL FARM 400 acres $/farm	TOTAL FARM Per acre	MALT BARLEY after beets or beans	MALT BARLEY after barley or corn	ALFALFA 2 cuts, custom cubed	DRY BEANS	CORN-SILAGE	SUGAR-BEETS	CUSTOM SERVICES for others, $/farm
					$/acre						
Estimated receipts:											
Malting barley	40 cwt	$ 5.75	32,200	80.50	230.00	230.00	—	—	—	—	—
Straw (piled loose)	.33 tons	18.00	840	2.10	6.00	6.00	—	—	—	—	—
Alfalfa cubes	4.5 tons	65.00	13,163	32.91	—	—	292.50	—	—	—	—
Dry beans	18 cwt	20.00	27,000	67.50	—	—	—	360.00	—	—	—
Corn silage	18 tons	18.00	6,480	16.20	—	—	—	—	324.00	—	—
Sugar beets	19 tons	40.00	91,200	228.00	—	—	—	—	—	760.00	—
Beet tops	19 tons	2.50	5,700	14.25	—	—	—	—	—	47.50	—
Combine barley	140 acres	25.41	3,557	8.89	—	—	—	—	—	—	3,557
Chop silage	20 acres	52.20	1,044	2.61	—	—	—	—	—	—	1,044
Swath: hay	90 acres	8.00	720	1.80	—	—	—	—	—	—	720
barley	78 acres	6.10	476	1.19	—	—	—	—	—	—	476
TOTAL RECEIPTS			182,380	455.95	236.00	236.00	292.50	360.00	324.00	807.50	5,797
Cash costs:											
Hired labor for: crops			9,270	23.18	14.57	16.87	10.25	21.45	21.98	34.62	405
machinery			1,097	2.74	1.23	1.57	.73	2.80	2.70	4.46	69
improvements			257	.64	.65	.66	.58	.59	.59	.69	--
Fuel			13,294	33.24	14.54	22.10	8.77	26.41	33.79	55.72	992
Repairs for: machinery			9,545	23.86	10.70	13.68	6.33	24.38	23.50	38.77	603
improvements			1,277	3.19	2.88	2.88	2.59	2.59	2.59	4.26	—
Utilities			1,182	2.95	2.73	2.73	2.73	2.73	2.73	3.48	---
Seed			5,637	14.09	11.00	11.00	—	27.00	16.00	14.60	—
Fertilizer			21,037	52.59	39.00	39.00	41.08	26.00	58.50	88.40	—
Herbicides			4,064	10.16	2.15	10.03	—	11.33	10.68	17.90	—
Insecticides & fungicides			1,758	4.40	—	—	4.00	2.00	—	11.90	—
Other materials			238	.60	.50	.50	.50	.60	.50	.75	—
Crop insurance			1,528	3.82	7.70	7.70	—	6.00	—	—	—
Custom work hired			12,566	31.42	—	—	89.00	7.75	—	66.50	—
General overhead (cash)			4,520	11.30	5.86	7.05	8.59	8.99	9.62	18.63	127
Interest, operating loan			7,117	17.79	9.23	11.10	13.51	14.17	15.14	29.34	200
Insurance: improvements			483	1.21	1.27	1.27	.98	.98	.98	1.40	—
equipment			681	1.70	.87	1.04	.57	1.45	1.61	2.69	58
Taxes: improvements			532	1.33	1.40	1.40	1.20	1.20	1.20	1.40	—
equipment			1,084	2.71	1.39	1.65	.91	2.30	2.57	4.28	93
land			1,200	3.00	3.00	3.00	3.00	3.00	3.00	3.00	—
Irrigation water			4,000	10.00	10.00	10.00	10.00	10.00	10.00	10.00	—
Subtotal, CASH COSTS			102,367	255.92	140.67	165.23	205.32	203.72	217.68	412.79	2,547
NET CASH INCOME			80,013	200.03	95.33	70.77	87.18	156.28	106.32	394.71	3,250
Depreciation and replacement of: [alfalfa stand			880	2.20	—	—	19.57	—	—	—	
[equipment			17,804	44.51	22.81	27.08	14.88	37.83	42.16	70.31	1,524
[improvements			1,551	3.88	3.45	3.45	3.21	3.21	3.21	5.15	—
Subtotal, Dep. & replacement			20,235	50.59	26.26	30.53	37.66	41.04	45.37	75.46	1,524
TOTAL OPERATING COSTS			122,602	306.51	166.93	195.76	242.98	244.76	263.05	488.25	4,071
NET FARM INCOME			59,778	149.44	69.07	40.24	49.52	115.24	60.95	319.25	1,726
Operators: wage			10,626	26.56	16.45	19.10	11.57	24.84	25.27	39.78	475
management			9,106	22.77	11.80	11.80	14.63	18.00	16.20	40.38	276
RETURNS TO INVESTMENT			40,046	100.11	40.82	9.34	23.32	72.40	19.48	239.09	975
Interest on: alfalfa stand			123	.31	—	—	2.74	—	—	—	—
equipment			11,401	28.50	14.68	17.34	9.53	24.21	26.98	45.00	975
improvements			4,010	10.02	10.45	10.45	8.45	8.45	8.45	11.37	—
RETURN TO LAND			24,512	61.28	15.69	(18.45)	2.60	39.74	(15.95)	182.72	—
Interest on land			24,000	60.00	60.00	60.00	60.00	60.00	60.00	60.00	—
TOTAL COST OF PRODUCTION			181,868	454.67	280.31	314.45	349.90	380.26	399.95	684.78	5,797
Return over total costs			512	1.28	(44.31)	(78.45)	(57.40)	(20.26)	(75.95)	122.72	-0-

[page 3]

ble 6. SUMMARY, PER ACRE COSTS of PRODUCING CROPS, TWO OPTIONS FOR LAND CHARGES, 400-acre farm, Powell area, Wyo., 1980.

em	MALT BARLEY[a]		MALT BARLEY[b]		ALFALFA[c]		DRY BEANS		CORN-SILAGE[d]		SUGAR BEETS	
Costs of production using LAND CHARGES OF $60/acre:[g]	$/acre	$/cwt	$/acre	$/cwt	$/acre	$/ton	$/acre	$/cwt	$/acre	$/ton	$/acre	$/ton
Cash costs	140.67	3.52	165.23	4.13	205.32	45.63	203.72	11.32	217.68	12.09	412.79	21.73
Depreciation-replacement:												
Alfalfa stand	---	---	---	---	19.57	4.35	---	---	---	---	---	---
Equipment	22.81	.57	27.08	.68	14.88	3.31	37.83	2.10	42.16	2.34	70.31	3.70
Improvements	3.45	.09	3.45	.09	3.21	.71	3.21	.18	3.21	.18	5.15	.27
Operator: wage	16.45	.41	19.10	.48	11.57	2.57	24.84	1.38	25.27	1.40	39.78	2.09
management	11.80	.29	11.80	.29	14.63	3.25	18.00	1.00	16.20	.90	40.38	2.12
Interest on:												
Alfalfa stand	---	---	---	---	2.74	.61	---	---	---	---	---	---
Equipment	14.68	.37	17.34	.43	9.53	2.12	24.21	1.34	26.98	1.50	45.00	2.37
Improvements	10.45	.26	10.45	.26	8.45	1.88	8.45	.47	8.45	.47	11.37	.60
Land ($1200 @ .05)	60.00	1.50	60.00	1.50	60.00	13.33	60.00	3.33	60.00	3.33	60.00	3.16
TOTAL COSTS	280.31	---	314.45	---	349.90	---	380.26	---	399.95	---	684.78	---
Cost per UNIT of PRODUCTION:	yield	cost/cwt[e]	yield	cost/cwt[e]	yield	cost/ton	yield	cost/cwt	yield	cost/ton	yield	cost/ton[f]
	40 cwt	6.86	40 cwt	7.71	4.5 tons	77.76	18 cwt	21.12	18 tons	22.22	19 tons	33.54
	45 "	6.15	45 "	6.91	4.0 "	84.65	16 "	23.56	20 "	20.29	17 "	37.27
	35 "	7.77	35 "	8.74	5.0 "	72.24	20 "	19.18	22 "	18.70	21 "	30.52
	50 "	5.59	50 "	6.27			22 "	17.58	16 "	24.64		
Costs of production using NET LAND RENT as charge for land:[g]												
Costs except interest on land (from above)	220.31	---	254.45	---	289.90	---	320.26	---	339.95	---	624.78	---
Second residence:												
Interest	2.62	---	2.62	---	2.62	---	2.62	---	2.62	---	2.62	---
Depreciation	1.25	---	1.25	---	1.25	---	1.25	---	1.25	---	1.25	---
Taxes, ins., repairs	2.48	---	2.48	---	2.48	---	2.48	---	2.48	---	2.48	---
NET LAND RENT	22.29	---	22.29	---	23.65	---	70.76	---	50.21	---	95.54	---
TOTAL COSTS	248.95	---	283.09	---	319.90	---	397.37	---	396.51	---	726.67	---
COST per UNIT of PRODUCTION:	yield	cost/cwt[e]	yield	cost/cwt[e]	yield	cost/ton	yield	cost/cwt	yield	cost/ton	yield	cost/ton[f]
	40 cwt	6.08	40 cwt	6.93	4.5 tons	71.09	18 cwt	22.07	18 tons	22.03	19 tons	35.75

/ Following beets or beans.
/ Following small grain or corn.
/ Custom cubed and piled.
/ Chopped and packed on the farm.

e/ Total costs minus $5.93 for straw divided by yield.
f/ Total cost minus $47.50 for tops divided by yield.
g/ Costs summarized from Table 5 and from crop budgets pages 35 to 43.

In the Study of Montana State University Extension Service dated February, 1978 a 420-acre farm was used involving only two crops which reflects smaller investment in equipment. The Study of the Agricultural Extension Service, University of Wyoming, dated November 1980 was based on a 400 acre farm on a broader diversification in crops involving greater investment in equipment. Both studies revealed that the return over total costs were not sufficient to sustain either farm unit. Two studies, performed in two totally different areas and totally different cropping pattern and both revealed the same trend as to income. This is significant and revealing information that supports the need for revision of the limitations in the Reclamation Act of 1902.

IN AS MUCH AS BOTH SENATE BILL NO. 1867 AND HOUSE BILL NO. 4265 PROPOSE RECLAMATION REFORM, BUT DIFFER IN ACREAGE ALLOWANCE, FULL COST PARTICIPATION AND LEASE REQUIREMENTS, WE CONCLUDED THAT OUR TESTIMONY COULD BEST CONVEY OUR POSITION BY WHAT SHOULD BE INCLUDED IN THE FINAL BILL RATHER THAN BEING FACED WITH SEPARATE RECOMMENDATIONS ON EACH BILL.

AMENDMENT OF RECLAMATION ACT OF 1902

THE PRELIMINARY RECITAL WHICH PROPOSES TO AMEND AND SUPPLEMENT THE ACT OF JUNE 17, 1902, AND ACTS SUPPLEMENTARY THEREOF (43 U.S.C. 371), SHOULD INCLUDE THE AMENDMENT OF ACREAGE PROVISIONS OF THE SMALL RECLAMATION PROJECTS ACT (PUBLIC LAW 84-984 AND PUBLIC LAW 84-130).

TITLE I VERSUS TITLE II CHOICE

IN BOTH BILLS UNDER DEFINITION, THE TERM "DISTRICT" IS IDENTIFIED AS MEANING "ANY INDIVIDUAL, OR LEGAL ENTITY ESTABLISHED UNDER STATE LAW, WHICH ENTERED INTO A CONTRACT WITH THE UNITED STATES (OR SECRETARY) FOR IRRIGATION WATER".

OUR CONCERN WOULD BE THAT IF THE CHOICE BETWEEN TITLE I AND TITLE II COULD BE CONSTRUED TO BE A DECISION MADE BY THE INDIVIDUAL LANDOWNER WHO NOW IS A PARTY TO A CONTRACT UNDER DISTRICT LIABILITY, THAT THIS PROCEDURE WOULD CREATE AN ADMINISTRATIVE HARDSHIP ON THE DISTRICT. FURTHER, INDIVIDUAL DECISION WOULD CREATE CONFUSION BY PROVIDING A

BASIS FOR LANDOWNER TO REVERSE HIS DECISION ON A SHORT TERM BASIS, OR UPON CHANGING OF LAND OWNERSHIP, THE NEW LANDOWNER COULD REVERSE THE DECISION OF THE PREVIOUS LANDOWNER.

WE BELIEVE THAT THE DECISION TO PROCEED WITH EITHER TITLE I OR TITLE II OF THE BILL, SHOULD BE A MAJORITY DECISION ARRIVED AT BY THE CONSTITUENTS OF THE LEGAL ENTITY ESTABLISHED UNDER STATE LAW AND NOT BY THE INDIVIDUALS SEPARATELY WHO ARE PART OF THE LEGAL ENTITY.

AS WE INTERPRET THE PRESENT LANGUAGE, INDIVIDUAL DECISION OR CHOICE OF TITLE I OR TITLE II WOULD BE AN ADMINISTRATIVE PROBLEM FOR THE DISTRICTS.

RESIDENCY

ONE FACT SHOULD BE ESTABLISHED, THE ENTRYMEN, PROSPECTIVE LANDOWNERS OR LANDOWNERS ON RECLAMATION PROJECTS IN MONTANA AND WYOMING, HAVE NOT BEEN GIVEN ANYTHING BUT AN OPPORTUNITY TO MAKE A HOME FOR THEIR FAMILY ON RECLAMATION PROJECTS. THE HARDSHIP OF BREAKING THE LAND, BUILDING HOMES, DEVELOPMENT OF LAND, PURCHASE OF MACHINERY, ACTUAL SURVIVAL AND ARRANGING OPERATING CAPITAL HAS ALWAYS BEEN THE FULL RESPONSIBILITY OF THE FARMER.

THEREFORE, WE WHOLEHEARTEDLY SUPPORT THE REPEAL OF THE RESIDENCY REQUIREMENT BECAUSE ANY CONTINUOUS RESIDENCY REQUIREMENT WOULD CONFLICT WITH THE PATENT ISSUED BY BUREAU OF LAND MANAGEMENT, WHICH STATES THAT AFTER RESIDENCY AND CULTIVATION REQUIREMENTS HAVE BEEN SATISFIED, THEN THE LAND BELONGS TO THE PATENTEE, HIS HEIRS OR ASSIGNS FOREVER.

CONTINUING RESIDENCY REQUIREMENT WOULD RAISE LEGAL INTERPRETATION FOR INDIVIDUALS AS TO:

(1) STAGE OF RETIREMENT.

(2) HEALTH - PHYSICAL CONDITION MAY REQUIRE RESIDENCY AT SOME LOCATION OTHER THAN THE LAND OWNED.

(3) INHERITANCE - SONS AND DAUGHTERS, IF THEY LEFT THE FARM, COULD NOT INHERIT OR MAINTAIN THE LAND OVER AN INDEFINITE PERIOD OF TIME.

(4) CONSTITUTIONAL RIGHTS OF CITIZENS TO MOVE ABOUT AS ANY OTHER GROUP.

(5) PLACES A CLOUD ON THE LEGAL TITLE TO LAND AND JEOPARDIZES SECURING OF FINANCING.

(6) PRECLUDES ESTATE PLANNING AND CREATES TAX PROBLEMS IN FORCED DISPOSAL PLAN.

IN CASE OF LANDOWNERS WHO HAVE PURCHASED LAND, RESIDENCY REQUIREMENT WOULD REDUCE THE NUMBER OF FARMERS WHO WOULD BE WILLING TO RISK INVESTING THEIR MONIES WITHOUT ASSURANCE THEY COULD DISPOSE OF THEIR LAND AS ANY OTHER CITIZEN.

EQUIVALENCY

IN THE NORTHERN CLIMATE AND SHORT GROWING SEASONS (100-150 DAYS OF FROST FREE DAYS) THAT ARE EXPERIENCED IN MONTANA AND WYOMING, WE BELIEVE THAT EQUIVALENCY IS A NECESSARY PART OF THE RECLAMATION REFORM OF THE ACT OF 1902. IN OUR AREAS THE CROPPING INTENSITY NEVER EXCEEDS 100% AS COMPARED TO THE WARMER CLIMATES WHERE CROPPING INTENSITIES MAY VARY FROM 150%-250%.

THE SHORT FROST FREE SEASON IN MONTANA AND WYOMING DOES NOT PERMIT ANY TIME TO CONTEMPLATE FARMING OPERATIONS. IF OPERATIONS ARE NOT PERFORMED ON A PRECISE SCHEDULE, THE CROP YIELDS WILL BE SUBSTANTIALLY REDUCED BY REASON OF CLIMATIC CHANGES, I.E., FROST, LATE SEASON PRECIPITATION, LACK OF SUFFICIENT WATER SUPPLY FOR LATE CROPS, ETC.

IN UPPER MISSOURI REGION (MONTANA, NORTH DAKOTA, SOUTH DAKOTA, WYOMING) THE AVERAGE VALUE OF CROPS GROWN ON 672,000 ACRES OF LAND UNDER RECLAMATION PROJECTS, WAS $197 PER ACRE IN 1979. THE VALUES RANGE FROM $70-$360 PER ACRE ON A PROJECT-WIDE BASIS.

THESE INCOME FIGURES ARE OBTAINED FROM USBR ANNUAL REPORT FOR THE YEAR 1979 AND VERIFIES THE PROBLEMS OF INADEQUATE FARM INCOME TO SUPPORT A FARM FAMILY ON A SMALL ACREAGE.

IN PORTION OF OUR AREAS, CLIMATE AND SOILS LIMIT CROP PRODUCTION TO THOSE SUPPORTING LIVESTOCK ENTERPRISES, SUCH AS PASTURE AND HAY. CROP LIMITATION BECOMES VERY CRITICAL IN THE DETERMINATION OF AN ECONOMIC SIZE FOR A FAMILY FARM. THIS IS SUBSTANTIATED BY THE MONTANA EXTENSION SERVICE AND WYOMING EXTENSION SERVICE STUDIES REFERRED TO IN FOREPART OF MY TESTIMONY. WE KNOW THAT THE PRODUCTIVE CAPACITIES, GROSS AND NET INCOMES OF LANDS IN SHORT GROWING SEASON AREA SUCH AS MONTANA AND WYOMING, WILL BE AT A LOWER LEVEL THAN FARMS LOCATED IN THE 150%-250% CROP INTENSITY AREAS. WE UNDERSTAND AND ACCEPT THESE FACTS.

HOWEVER, THE MOST LOGICAL WAY TO EQUALIZE FARM UNITS IN WESTERN UNITED STATES IS THROUGH AN EQUIVALENCY FACTOR WHICH WILL MORE NEARLY PLACE THE FARMS ON THE SAME LEVEL WITH RESPECT TO SUSTAINING AN ECONOMIC AND VIABLE FAMILY SIZE FARM.

FOR THESE REASONS WE RECOMMEND AND SUPPORT THE EQUIVALENCY FACTOR.

ACREAGE LIMITATION

UNDER TITLE II-OPTIONAL EXPANDED OWNERSHIP IN BOTH HR 4255 AND S-1867, A "QUALIFIED RECIPIENT" MEANS AN INDIVIDUAL WHO IS A CITIZEN OF THE UNITED STATES OR A RESIDENT ALIEN THEREOF, OR ANY LEGAL ENTITY ESTABLISHED UNDER STATE OR FEDERAL LAW.

Under HR 4265, irrigation water may be delivered to a qualified recipient for 960 acres of Class 1 land or equivalency thereof, whether such land is owned, leased or a combination thereof, within a district.

In Senate Bill 1867, irrigation water may be delivered to a qualified recipient for use in irrigation of land holdings of not more than 3200 acres of Class 1 land or equivalent thereof, provided that not more than 1600 acres may be owned by the recipient.

Both bills provide for farming of additional land at "full cost" prices.

We prefer the wording and limitations of Senate Bill 1867 as most nearly meeting our needs in Montana and Wyoming. In our opinion HR 4265 would be short of meeting our needs and Senate Bill 1867 somewhat exceeds our present day needs.

The projection of future trends, admonishes us not to place future generations in the same jeopardy as we face today. In this context, we would support the acreage limitations as outlined in Senate Bill S-1867. Recognizing that in Montana and Wyoming, few landowners would exercise their right to these limitations today.

REGLIGIOUS AND CHARITABLE NON-PROFIT ORGANIZATIONS ARE EXEMPT FROM ACREAGE LIMITATION

BOTH SENATE BILL S-1867 AND HOUSE BILL HR 4265 CONTAIN LANGUAGE WHICH EXEMPTS RELIGIOUS AND CHARITABLE NON-PROFIT ORGANIZATIONS FROM ACREAGE LIMITATION.

THE MONTANA WATER DEVELOPMENT ASSOCIATION AND THE HEART MOUNTAIN IRRIGATION DISTRICT OF WYOMING ARE STRONGLY OPPOSED TO THIS TYPE OF EXEMPTION. WE BELIEVE THAT SUCH AN EXEMPTION FROM ACREAGE LIMITATION COULD PLACE CONTROL OF DISTRICTS OR PROJECTS IN JEOPARDY AND THE PRODUCTION OF CROPS BEING WITHHELD FROM THE MARKET PLACE FOR THE AMERICAN PEOPLE.

IT IS OUR RECOMMENDATION THAT RELIGIOUS AND CHARITABLE NON-PROFIT ORGANIZATIONS NOT BE EXEMPT FROM THE ACREAGE LIMITATION AND TO APPLY THE SAME POLICY TO SUCH ORGANIZATIONS AS TO INDIVIDUALS.

RECORDABLE CONTRACTS

WE HAVE NO OBJECTIONS TO THE LANGUAGE CONTAINED IN HOUSE BILL HR 4265 OR SENATE BILL S-1867, REGARDING THE DISPOSAL OF EXCESS LANDS.

OUR PRIMARY CONCERN WOULD BE TO PERMIT THE LANDOWNER SUFFICIENT TIME IN THE RECORDABLE CONTRACT TO DISPOSE OF HIS EXCESS LAND AT MARKET VALUE AT THE TIME OF THE SALE. THE SECRETARY SHOULD ALLOW SUCH PERIOD OF TIME TO MINIMIZE THE EFFECT OF TEMPORARY PERIODS OF DEPRESSED LAND VALUES WHICH NORMALLY WOULD BE OF SHORT DURATION.

LEASING

FOR THE BEGINNING FARMER OR AN EXPANDING FARMER AND AT PRESENT DAY LAND VALUES, LEASING OFFERS THE ONLY METHOD TO PURSUE HIS OR HER AVOCATION UNLESS OTHER FINANCIAL RESOURCES OR EQUITIES ARE AVAILABLE.

AT TODAY'S LAND VALUES AND HIGH INTEREST RATES, WITHOUT A SUBSTANTIAL DOWN PAYMENT ON THE LAND AT PRESENT CROP PRICES, THERE IS NO WAY CROP PRODUCTION CAN PAY FOR THE LAND IN MONTANA AND WYOMING.

WHILE WE WOULD NOT OBJECT TO WRITTEN LEASES, ADMINISTRATION OF SUCH A PROGRAM WOULD BE CUMBERSOME AND INFRINGE UPON THE PRIVACY OF THE INDIVIDUAL. WE BELIEVE THAT THE TERMS OF A LEASE SHOULD BE A MATTER OF CONCERN BETWEEN THE LESSOR AND LESSEE, IF ALL OTHER LIMITATIONS HAVE BEEN MET. A CERTIFICATION STATEMENT BY LESSOR AND LESSEE AS TO ACREAGES AND DESCRIPTION SHOULD BE SUFFICIENT.

Contract Payout

We support the concept that after the obligation of a district for repayment of the construction costs of the project facilities has been discharged, whether by payment of a single lump sum or by periodical installments throughout a specified contract term or by an accelerated schedule, that neither the limitations or restrictions of the Federal Reclamation law shall be imposed.

Validation

We support the provision that permits any non-federal party to a contract with the Secretary, an opportunity to have that provision of the contract validated.

Consent to Sue

We support the provision that permits any party to bring action in the United States district court to remedy any inequities which may have arisen as a result of a decision made by the Secretary or his representative, when such decision affects the interpretation of contractual right of any person or entity.

Amendment of Districts Contracts

In order to conform an existing contract to Title II - "Optional Expanded Ownership", amendment of the existing contract is required. We strongly recommend that only those provisions of the existing contracting dealing with the "Optional Expanded Ownership" be amended and that any

OTHER PROVISION OF EXISTING CONTRACT NOT BE AFFECTED BY SUCH AMENDMENT UNLESS THE INDIVIDUAL OR CONTRACTING ENTITY AGREES.

FULL COST PROVISIONS

WE DO NOT SEE ANY NEED FOR APPLYING A DUTY OF WATER FOR FULL COST PROVISIONS BECAUSE REPAYMENT COSTS ARE COMPUTED ON AN ACREAGE BASIS AND ANY DELIVERY OF WATER TO SUCH LANDS WOULD BE ENTITLED TO SAME DELIVERY OF WATER RATE AS OTHER NON-FULL COST ACREAGE.

SUMMARY

1. BOTH SENATE BILL S-1867 AND HOUSE BILL HR 4265 PROVIDE DESIRABLE UPDATING OF THE RECLAMATION ACT OF 1902. WE BELIEVE THE ACREAGE LIMITATION OF S-1367 WOULD MOST LIKELY CONFORM TO FUTURE REQUIREMENTS OF AN ECONOMIC FARM UNIT.
2. WE SINCERELY BELIEVE THAT RESIDENCY MUST BE REMOVED AS A REQUIREMENT TO OWN LAND IN ORDER TO ALLOW THE APPLICATION OF ACCEPTED STANDARDS FOR RIGHTS OF CITIZENS TO PLAN THEIR ESTATES, TO HAVE RESIDENCE OF THEIR CHOICE, TO SELL OR LEASE LAND TO WHOM THEY CHOOSE AND TO ENJOY THE BENEFITS OF INDIVIDUAL EFFORT AND SACRIFICE.
3. UNLESS FARM UNITS ARE ALLOWED TO INCREASE ACREAGE OWNERSHIP, WE WILL LOWER THE QUALITY OF FARMERS ON THE LAND AND INCREASE THE NUMBER OF LESS EFFICIENT FARMERS.

4. WE SUPPORT CLASS 1 EQUIVALENCY FACTOR TO EQUALIZE FARM UNITS WITH THE MORE PRODUCTIVE LANDS IN WARMER CLIMATES.
5. WE RECOMMEND THAT THE CHOICE BETWEEN TITLE I AND TITLE II BE THE DECISION OF A MAJORITY OF PARTIES WITHIN THE LEGAL ENTITY.
6. WE OPPOSE ANY AND ALL EXEMPTIONS FOR ACREAGE LIMITATIONS FOR RELIGIOUS AND CHARITABLE NON-PROFIT ORGANIZATIONS.
7. WE HAVE NO OBJECTIONS TO RECORDABLE CONTRACTS PROVIDING THE LANDOWNER IS ALLOWED SUFFICIENT TIME TO DISPOSE OF HIS LAND AT MARKET VALUE.
8. WE SUGGEST LEASING AS AN INTEGRAL PART OF PROJECT VIABILITY.
9. WE SUPPORT THE REMOVAL OF LIMITATIONS AND RESTRICTIONS IMPOSED BY FEDERAL RECLAMATION LAW UPON DISCHARGE OF REPAYMENT OBLIGATION.
10. WE SUPPORT VALIDATION OF CONTRACTS OR PROVISIONS CONTAINED THEREIN.
11. WE SUPPORT THE RIGHT OF ANY NON-FEDERAL PARTY TO A CONTRACT TO SUE TO REMEDY ANY INEQUITIES WHICH MAY ARISE AS RESULT OF DECISION MADE BY THE SECRETARY OR HIS REPRESENTATIVE REGARDING CONTRACT LANGUAGE.

12. We support the provision that any amendment of an existing contract shall not require opening any portion of the contract not affected by repeal of the Reclamation Act.
13. Full cost provisions should be based on an acreage basis rather than duty of water.
14. For sake of settling this issue, Congress should now assert their knowledge and skills to legislate a Reclamation Reform Act that recognizes current conditions and would allow for future revisions if required. It is important to legislate a Reclamation Reform Act now so that the projects and its farmers can direct their energies toward other concerns.

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before you and express our opinions and concerns.

The **Chairman**. Thank you.

Mr. Winterburn?

STATEMENT OF CRAIG WINTERBURN, PRESIDENT, RUNNING W CATTLE CO.

Mr. **Winterburn**. Thank you, Mr. Chairman.

I am Craig Winterburn, president of Running W Cattle Co., and I am representing my family as owners of the Running W Cattle Co., a family farm corporation basically engaged in the production of beef, hay, and grain and also the Helena Valley Irrigation District and other federally funded irrigation districts in the State of Montana.

I come here today in full support of S. 1867. Attached to my statement is testimony given in Spokane to the Bureau of Reclamation.

I think this bill is generally in line with the ideas set forth in that testimony. In that testimony we supported elimination of residency requirements, equivalency provisions, and payout provisions.

My wife and I bought a ranch in Helena Valley in 1970 and if prices get better, it will only take another 25 years to retire the debt.

Montana has a short growing season and the crop production in our area is limited to 3 tons per acre of hay and small grains and it takes considerably more than 160 acres to meet indebtedness commitments to afford today's needed machinery and to provide your family with a living.

S. 1867 with a 3,200-acre limitation owned and leased with equivalency provisions will allow economic Montana farms and ranches to survive on Federal irrigation projects.

The only parts of this bill that I am not in full agreement with are as follows:

Title II, section 203, Delivery of Water. I feel that if the owner is in compliance and the lessor and the lessee are "qualified recipients" as defined in (B) of title II, section 201, leasing should not be restricted at all and should not be included in acreage limitation.

This would allow the young man while still working with his father to lease, build up equity, share machinery and eventually get out on his own without jeopardizing the rest of the family.

Title I, section 106(B). If this bill has properly addressed the problems of allowing economically feasible agriculture units, the further advantage to religious and charitable organizations is not necessary.

The acreage limitations as adopted in this act should also apply to the Rehabilitation and Betterment Act of 1949 and the Small Reclamation Projects Act of 1956.

I would like to leave you with this one thought. What a good investment for the American taxpayer reclamation projects have been.

We hear a lot of talk about spreading benefits of reclamation projects to as many as possible and avoid windfall profits. Let me tell you, profits of any kind are few and far between in agriculture today.

If profits are gained in the value of land, the equity gained is usually used to borrow more money to offset production losses.

The benefits of reclamation water projects have gone to all Americans by helping make food available at less than 16 percent of every dollar they spend. No other nation can even come close to this.

Can you imagine what the cost of food would be today if you took the major reclamation projects like the Imperial and San Joaquin Valleys in California and the Columbia River Basin in Washington off the market?

What other Federal programs can say that after the front-end investment, the program's own production sustained itself and provided a product to the taxpayer investor at a lessor cost? Economically sound reclamation projects are benefiting all Americans.

I urge your support in the passage of S. 1867. Thank you.

The CHAIRMAN. Thank you.

Mr. Etchart.

STATEMENT OF MARK ETCHART, STATE SENATOR, DISTRICT 2, MONTANA STATE SENATE

Mr. ETCHART. Mr. Chairman, my name is Mark Etchart. My home is in Glasgow, Mont. My business is cattle ranching and irrigated farming.

I also serve as a director on the three-man Glasgow Irrigation District Board, as past president of the four-State Upper Missouri Water Users Association and last, but not least, as a State senator in the Montana legislature, representing the people of Senate District 2. I am here representing the Montana Water Development Association and the Glasgow Irrigation District and I speak as a proponent of the bill.

I have no doubt that the Congress of the United States intended when passing the 1902 Reclamation law that irrigation projects subsidized by Government funds should be peopled with profitable family-sized farms that would support a network of small towns and villages, thereby populating the vast empty prairies with industry and commerce, turning the land into wealth and contributing to the Nation in much the same spirit as the Homestead Acts of an earlier era and that once the Federal dollars were repaid by the landowners, the restraints and controls of the governing bureaucracy would be loosened.

S. 1867 gives the Secretary of the Interior the flexibility to determine an economic unit and to take into consideration soil characteristics, crop adaptability, cost of crop production and length of growing season to allow water delivery to farms which have grown into excess acreage in the last 79 years.

Many people have the theory that our valuable land resource would be better protected in small irrigated tracts.

One who disagrees with this is Dr. Richard McConnen, agricultural economist at Montana State University, who stated at a water meeting in Wolf Point, Mont.:

> Subsistence type irrigated farmers are forced to use more water as a replacement for labor and capital improvements. The best way we could insure that our water resources are used wisely would be to allow our irrigated farmer a decent return on

his investment so he can accumulate profits for ditch improvements, land leveling, drainage work and conservation practices.

We find that the heavy clay gumbo in our class 3 and class 4 lands would probably not even qualify for inclusion in a Bureau of Reclamation project today because of the poor productive capability.

Our project was built back in 1916.

There is very little class 1 land in the Milk River project and out of 18,011 acres under the Glasgow Irrigation District, only 583 acres are class 1.

The planners of our project in the early 1900's looked to sugar beets and potatoes as being the major cash crop. Today we find that whereas in 1938 there were about 15,000 acres of sugar beets raised on the Milk River project, the poor soils combined with a short unpredictable growing season has reduced the sugar beet acreage to only 350 acres today.

Our crop records show that we have been forced to switch to livestock forage production to utilize our class 3 and class 4 soils and this has tied our crop production to the livestock business which is well known as a boom and bust proposition.

We, certainly, wish we could raise $1,500 to $1,700 of potatoes per acre as they do in the Columbia Basin in Washington. We have tried and failed and we are now raising alfalfa hay with a return of more like $100 an acre.

On these older projects, there were no reimbursables as you mentioned earlier for all of the different things such as wildlife and so on.

All of the costs of this project are being paid by the landowners.

The average age of the American farmer is 57 years old and we must maintain economic incentives to encourage the younger generation to continue to produce needed food and fiber on the land.

Today's youth are demanding more than the mere subsistence possible on a 160-acre irrigated farm on the Milk River project.

We feel that S. 1867 would give us the relief we need on the Milk River project and specifically the Glasgow Irrigation District.

We think the equivalency formula should allow two or three times the number of acres of class 1 land in the longer growing season areas and better soils to be equitable in our area.

We endorse that there be no residency requirement; that there be the assurance that all present acreage limitation contract exceptions will be honored; there should be no limitation on leasing; and that when a project is paid off, the acreage limitations will not apply.

The irrigators would like to commend your efforts to straighten out a longstanding problem in reclamation law.

I would like to mention that in our operation we are farming about 1,600 acres. This is my brother, his wife, and my wife and I. With nine children, this would entitle us to 2,080 acres. I do not think 1,600 acres per family is necessarily as great a jump as the average population thinks.

I sincerely hope this will be successful in improving the law of our land. Thank you.

[The prepared statement of Mr. Etchart follows:]

The Big Sky Country

MONTANA STATE SENATE

SENATOR MARK ETCHART
DISTRICT NO 2
GLASGOW, MONTANA 59230
HELENA ADDRESS:
613 1ST STREET
442-6377

COMMITTEES:
FINANCE AND CLAIMS
HIGHWAYS AND TRANSPORTATION, CHAIRMAN
NATURAL RESOURCES

S. 1867 Testimony for
the Senate Committee on
Energy and Natural Resources

My name is Mark Etchart, my home is Glasgow, Montana and my business is cattle ranching and irrigated farming. I also serve as a Director on the three man Glasgow Irrigation District Board, as past President of the four state Upper Missouri Water Users Association, and last but not least as a State Senator in the Montana Legislature representing the people of Senate District 2. I am here representing the Montana Water Development Association and the Glasgow Irrigation District, and speak as a proponent of the bill.

I have no doubt that the Congress of the United States intended, when passing the 1902 Reclamation Law, that irrigation projects subsidized by government funds should be peopled with profitable family-sized farms that would support a network of small towns and villages, therby populating the vast empty prairies with industry and commerce, turning the land into wealth and contributing to the nation, in much the same spirit as the Homestead acts of similar era, and that once the Federal dollars were repaid by the landowners, that the restraints and controls of the governing bureaucracy would be loosened.

In 1902, most farming was done with primitive farm machinery, and a good hard working farmer, working most of the day-light hours with a five horse team, could plow five acres in a good day. Dryland farming operators, with modern equipment can now easily plow 30 times that acreage in a day and teamed with our capable and industrious farmers can perform near miracles in agricultural crop production. This has allowed the American people to earn their daily bread with an expenditure of only 17 percent of their income on the average, much less than any other country on this earth.

The Homestead Act worked well and once a farmer proved up on his land, it was his to farm as best he could. Advancing technology has allowed the dryland farmer of today in Valley County to farm five times the acreage which he did only 45 years ago. Unfortunately, irrigated agriculture has fallen behind in some areas. The Competitive economic pressures collided with the 1902 law, and 79 years later it is time to update this antiquated legislation to more nearly fit the realities of today's world. It is now incumbent upon us, as the people directly affected, to call upon our Congress to modify the original 1902 act. S 1867 gives the Secretary of the Interior the flexibility to determine an economic unit and to take into consideration "soil characteristics, crop adaptability, cost of crop production, and length of growing season," to allow water delivery to farms which have grown into excess acreage in the last 79 years.

Many people have the theory that our valuable land resource would be better protected in small irrigated tracts. One who disagrees with this is Dr. Richard McConnen, Agricultural Economist at Montana State

University, who stated at a water meeting in Wolf Point, "Subsistence type irrigated farmers are forced to use more water as a replacement for labor and capital improvements. The best way we could insure that our water resources are used wisely would be to allow our irrigated farmer a decent return on his investment so he can accumulate profits for ditch improvements, land leveling, drainage work, and conservation practices."

District Judge Leonard H Langen, a son of a pioneer ranching family, stated the "Our winters are long and cold, the growing season is short, and the land is mostly heavy gumbo. During the depression years prior to World War II, the Re-settlement Administration spent millions of dollars in the Milk River area purchasing 160 acre tracts, leveling them for irrigation purposes, bringing water to each tract, and building numerous improvements such as a house, outbuilding, fences, etc. These were called subsistence farmsteads and were sold to various individuals on long-term contracts with generous payment provision. So far as I know there is not a single 160 acres subsistence farmstead which has survived as an economic unit. All of them have been combined with other lands and made into larger irrigation units. The houses have been sold and moved away. I think this experience is relevant in that it shows that even under 1930 conditions the 160-acre irrigated farmstead was a complete failure insofar as the Milk River Project was concerned. I think it is obvious that under 1981 economic conditions, such a program would have even less likelihood of success."

We find that the heavy clay gumbo in our Class 3 and 4 lands would probably not even qualify for inclusion in a Bureau of Reclamation project today because of the poor productive capability. There is very little Class 1 land in the Milk River Project, and out of 18,011 acres under the Glasgow Irrigation District, only 583 acres are Class 1.

The planners for our project in the early 1900's looked to sugar beets and potatoes as being the major cash crop. Today, we find that whereas in 1938 there were about 15,000 acres of sugar beets raised on the Milk River Project, the poor soils combined with a short unpredictable growing season has reduced the sugar beet acreage to only 350 acres today. Our crop records show that we have been forced to switch to livestock forage production to utilize our Class 3 and 4 soils and this has tied our crop production to the livestock business, which is well known as a boom and bust proposition. We certainly wish that we could raise $1,500 to $1,700 of potatoes per acre as they do on the Columbia Basin, Washington Projects. We have tried and failed and are now raising a crop of alfalfa hay with a return of $100.00 per acre.

I am sure that Congress is well aware of the need for this type of legislation since they authorized on March 11, 1976, the Polecat Bench Project in Wyoming and the Pollock-Herreid Project in South Dakota with an acreage equivalency formula. The East Bench Project in western Montana and the Riverton Project in Wyoming were also built in the 1960's and 1970's respectively with authorization by Congress to supply water to more than 160 acres of the lower classes of land. We only ask that the older projects, such as ours,which was started in July of 1906 and first delivered water in 1911 and has many inherent problems, be allowed the same treatment as these new projects are getting, as attested to by including the equivalency formula on the last projects authorized by Congress.

The average age of the American farmer is 57 years old and we must maintain economic incentives to encourage the younger generation to continue to produce needed food and fiber on the land. Today's youth are demanding more than the mere subsistence possible on a 160-acre irrigated farm on the Milk River Project.

We feel that S 1867 would give us the relief we need on the Milk River Project and specifically the Glasgow Irrigation District.

We think that the equivalency formula should allow two or three times the number of acres of Class 1 land in the longer growing season areas and better soils, to be equitable in our area.

We indorse the following provisions:

1. That there be no residency requirement.

2. The assurance that all present acreage limitation contract exceptions will be honored.

3. That there should be no limitation on leasing.

4. That when a project is paid off, the acreage limitations will not apply.

The irrigators would like to commend your efforts to straighten out a long standing problem in reclamation law.

I sincerely hope that this time we will be successful in improving the law of our land.

The CHAIRMAN. Thank you very much.

I might note at this point that Senator Baucus had intended to be here to welcome you and I am sure Senator Melcher who is a member of the committee also commends you for your interest and concern. Senator Baucus has filed a statement which will appear at the beginning with my statement and other members of the committee and Senator Hayakawa.

I would like to highlight one of the comments Senator Baucus made in his prepared statement with respect to the residency requirement.

He said:

> Distances in Montana are vast. In many cases irrigated farms produce winter feed for livestock ranches and these farms are often more than 50 miles from ranch headquarters.

I think that is a statement of fact which needs to be compared to the urging of some people under other circumstances perhaps that they either want the people to reside on or within 15 miles of the irrigated farming operation.

I do appreciate your testimony.

We are trying to balance different interests, balance different considerations. One is acreage limitation versus cost of recovery for lands that might be in excess of that basic limitation.

In many instances witnesses come and they want higher acreage limitations and lower full cost recovery. I understand that statement.

If you have to make a choice, which is more important to you, a lower cost recovery for lands in excess, coupled with a lower acreage limitation or would you prefer to have a higher acreage limitation coupled with a higher full cost recovery?

Mr. FAGERBERG. That is a difficult question. I would think we would prefer the higher acreage limitation. If this higher acreage limitation would look into the future and not dedicate itself to present day conditions, I think we would prefer higher acreage limitation.

Mr. WINTERBURN. Higher than what? If we are using your figure of 1,600 acres as opposed to 960?

The CHAIRMAN. Just as a general proposition. You can relate it to that if you like.

Mr. WINTERBURN. I would hope the operators under these projects originally started by Federal funds would eventually be in a position where they would pay out and they are on their own.

I think until we get to that point, we are always going to be confronted with this kind of problem. I think I would probably favor a reasonable approach to the payout provision and lesser acreage limitation so that end could eventually be realized.

The CHAIRMAN. I hope we are all going to reach in any legislation we get a payout provision that allows you once it is paid for to be relieved of all the restrictions that are inherent here under the contracts of repayment.

My question is really addressed to between now and that time, do you want a more restricted acreage limitation and a less restrictive full cost recovery on lands in excess or would you rather live under a larger acreage limitation with a higher cost recovery for the lands in excess?

That may be a question you do not want to answer but it is a question we have to ask ourselves. We are trying to find that answer.

Mr. ETCHART. Senator, I think we would go for the higher acreage limitation and it is reasonable that once you exceed that, full cost be recovered.

The CHAIRMAN. If that acreage is a reasonably high limitation?

Mr. ETCHART. Yes. The point was made earlier that the cost of the money borrowed at the time should be used in calculations or should be a factor. That was what the landowners agreed to at the time. If high rates of interest had been in effect at the time, they might not have even built the project.

Mr. WINTERBURN. On that basis, I would agree with the two other gentlemen. I would point out that in our operation we irrigate about 1,300 acres. I now have four children, my wife and myself. With equivalency, either position, we are covered on the acreage at this point.

What I look at is where we are going from here.

The CHAIRMAN. I share that concern. I do not know how long I will be sitting on this side of the table but I would hope if we can get legislation passed, however that brief period may be that I am still here, that we do not have to come back and try to do it again.

Mr. FAGERBERG. I would second that.

The CHAIRMAN. Thank you very much.

The next panel consists of Alvin Quist, California Rivers Association; Robert Leake, California Rivers Association; Burnham Enersen, representing North Kern Water District and California Rivers Association.

STATEMENT OF ALVIN J. QUIST, CHAIRMAN, KINGS RIVER WATER USERS COMMITTEE, MEMBER OF THE BOARD OF DIRECTORS, FRESNO IRRIGATION DISTRICT

Mr. QUIST. Thank you, Mr. Chairman.

As a matter of record, even though we enjoy the prestige at the moment of representing the California Rivers Association, in fact, we do not. I do not know that such a group exists.

The CHAIRMAN. We will allow the record to be corrected by whatever statement you make as to who it is you do represent.

Mr. QUIST. Yes, sir. Mr. Leake and I do represent the Kings River Water Users which represents 28 public and private agencies on the Kings River and the acreage that we irrigate is approximately 1,100,000 acres.

I am a farmer. Our testimony today is in support of the language in S. 1867 which would correct the misapplication of section 8 of the 1944 Flood Control Act to Corps of Engineers' projects where the Federal Government does not provide additional irrigation works or sell water made available from the project.

This situation is also compounded by the Department of Interior's reversal in 1961 of its longstanding policy that payout provides relief from the acreage limitation provisions of Federal reclamation law.

These issues came into focus because of the four projects authorized by the 1944 Flood Control Act for the Kern, Tule, Kaweah, and Kings Rivers in the Sierra foothills of the San Joaquin Valley.

I would like to cap my testimony briefly and point out there were a number of compelling reasons why Congress authorized the Pine Flat project as a flood control project rather than a reclamation unit of the Central Valley project.

Some of these reasons are the flood control benefits were determined to be greater than irrigation benefits. There were no arid lands to be developed. The Government claimed no water rights. The Bureau of Reclamation did not construct additional works. The project did not provide supplemental water which could be sold by the Government. The project was not to be operated by the Bureau of Reclamation.

The Pine Flat project and the Kings River service area cannot be made to function satisfactorily under the acreage limitation provisions of reclamation law because there will not be any breakup of large landholdings; Tulare Lake cannot be farmed in small tracts and I would refer to the supplement that goes with my testimony and a copy of a letter from former Secretary Andrus to Congressman Udall in which he cites one of the reasons he agrees with this philosophy.

No. 3, the Federal subsidy will not result in cheap land availability for redistribution. Four, there will be a disruption of the coordinated river operations.

In conclusion, sir, since no Federal purpose will be accomplished by imposing such limitations on the Kings River service area but rather substantial harm will result, especially to small farmers and landowners, we urge that any legislation to reform Federal reclamation law provide an outright exemption for the Pine Flat project and other Corps of Engineers' projects that are not integrated in a reclamation project.

We feel the language in the current version of S. 1867 will accomplish such an exemption.

Thank you for the opportunity to submit this testimony.

The **Chairman**. Thank you very much.

Mr. Leake.

STATEMENT OF ROBERT LEAKE, KINGS RIVER WATER USERS

Mr. **Leake**. Mr. Chairman, I have nothing to add to his testimony other than to observe this controversy has been around for nearly 40 years on Kings River. I have personally been involved for about 23 years.

We are delighted to see the language in your bill. We hope it will be passed and once and for all will resolve this controversy that has been so counterproductive in our area.

Thank you.

[The prepared statement of Mr. Quist follows:]

STATEMENT OF ALVIN J. QUIST
BEFORE THE SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

Mr. Chairman and members of the Committee, I am appearing here as chairman of the Kings River Water Users Committee and I am also a member of the Board of Directors of the Fresno Irrigation District. I am a diversified hay, cotton, grape and dairy farmer with operations near Fresno, California.

My testimony will be in support of the language in S. 1867 (McClure) and H.R. 4265 (Lujan) which would correct the misapplication of Section 8 of the 1944 Flood Control Act to Corps of Engineers Projects where the Federal government does not provide additional irrigation works or sell water made available from the project. This situation is also compounded by the Department of Interior's reversal in 1961 of its long-standing policy that payout provides relief from the acreage limitation provisions of Federal reclamation law.

These issues came into focus because of the four projects authorized by the 1944 Flood Control Act for the Kern, Tule, Kaweah and Kings Rivers in the Sierra foothills of the San Joaquin Valley.

I will discuss briefly the evolution of the problem as it relates to the Pine Flat Project on Kings River since it sets the precedent for the other three projects and perhaps many others around the country.

Presented at the Committee hearings scheduled for December 10 and 11, 1981 in Washington, D.C.

Section 10 of the 1944 Flood Control Act authorized the War Department (U.S. Army Corps of Engineers) to design and construct the Pine Flat Project as a flood control project with incidental irrigation uses, thus resolving the intense, long-standing controversy between the Corps and the Bureau of Reclamation as to which agency would develop the Project. The Bureau wanted to integrate the Pine Flat Project into the Central Valley Project (C.V.P.), but the local water users were bitterly opposed because they were aware that the acreage limitation provision would be imposed.

Section 10 also provided "that the Secretary of War shall make arrangements for payment to the United States by the State or other responsible agency, either in lump sum or annual installments, for conservation storage when used."

The Secretary of War indicated that such repayment arrangements would be made without any special requirements on the local water users except the ability to repay the cost allocated to conservation use. That was commonly understood to mean that the acreage limitation provisions of Federal reclamation law would not apply.

However, on May 2, 1946, then President Harry Truman directed that the Commissioner of the Bureau of Reclamation to "proceed forthwith to make the necessary repayment arrangements with the prospective water users."

At that same time, the President ordered all funds for the Kings River Project impounded "pending determination of the allocation of costs and the making of the necessary repayment arrangements."

The State of California and the local water users determined that the cost attributed to conservation should be $10,000,000, while the War Department (Corps of Engineers) calculated that the amount should be $13,232,000. However, the Bureau of Reclamation insisted that the irrigation share should not be less than $14,250,000.

The Secretary of War determined that the division of costs to irrigation should be set at an amount not to exceed $14,250,000, the exact amount to be as agreed upon between the Bureau of Reclamation and the local agencies concerned. The figure was never reduced from the $14,250,000 originally proposed by the Bureau of Reclamation.

Despite their protests, the local water users were left with no choice but to attempt to negotiate repayment contracts with the Bureau of Reclamation and, of course, the Bureau insisted that the contracts contain the acreage limitation provisions of Federal reclamation law.

Negotiations continued through 1960, but agreement could not be reached on the terms of repayment contracts. However, the concept that payout of capital cost would provide relief from the excess lands provision was consistently recognized by the representatives of the Department of Interior verbally and in writing.

In 1961, Interior Solicitor Frank Barry issued an opinion that reversed the long-standing policy that payout would lift the acreage limitation provisions of reclamation law.

The local water users disputed the Solicitor's opinion but ultimately agreed to a test case lawsuit in order to obtain permanent repayment contracts, thus securing credit for over $6,000,000 already paid to the United States under interim storage contracts.

The suit was filed in the U.S. District Court, Eastern District of California in December of 1963 and, in 1972, Judge M.D. Crocker held that reclamation law did not apply to water stored behind Pine Flat Dam, and if it did, payout would provide relief from the 160 acre limitation.

In 1976, the Ninth Circuit Court of Appeals reversed the District on both points, and in February, 1977, the Supreme Court refused to hear the case. However, litigation of certain constitutional questions raised by defendants, Tulare Lake Canal Company, is still in progress.

There were a number of compelling reasons why Congress authorized the Pine Flat Project as a flood control project rather than a reclamation unit of the Central Valley Project. Some of the reasons are:

(1) Flood Control Benefits Were Determined to Be Greater Than Irrigation Benefits.

Studies showed that the project would provide major flood control benefits with incidental conservation storage for irrigation. Actual operation over the past 26 years has confirmed that conclusion.

(2) There Were No Arid Lands to be Developed.
Initial development of the Kings River service area began in the early 1850's shortly after California was admitted to the Union. By the time the Pine Flat Project was completed in February, 1954, virtually the entire 1,100,000 acres served by Kings River was already in irrigated agriculture.

(3) The Government Claimed No Water Rights.
All rights to Kings River water were vested in the water users before the Dam was completed. In fact, in 1965, the local interests paid the United States the sum of $750,000 in exchange for the Bureau relinquishing its disputed claim to certain waters of Kings River.

(4) The Bureau of Reclamation Did Not Construct Additional Works.
All of the facilities for the diversion and delivery of Kings River water to the farmers were owned by the local water districts and mutual water companies. These facilities represented an investment of some $70,000,000 (circa 1944) none of which was provided by the Federal government.

(5) The Project Did Not Provide Supplemental Water Which Could be Sold by the Government.
Because of the extensive distribution system owned by the local entities, over 90% of the

flow of Kings River was beneficially used before Pine Flat was completed. The project now permits the water users to store a portion of their water from the spring snowmelt and release it later in the summer to meet peak crop water requirements.

(6) Project Not To Be Operated by the Bureau of Reclamation.

The Bureau of Reclamation plays no role in the operation of the Pine Flat Project nor the allocation and distribution of the waters of Kings River to the users. Personnel of the U.S. Army Corps of Engineers operate the Dam and the Kings River Water Association administers the water rights and its 28 members distribute the water to the farmers.

The Pine Flat Project and the Kings River service area cannot be made to function satisfactorily under the acreage limitation provisions of Federal reclamation law because:

(1) No Breakup of Large Landholdings.

There will not be any breakup of large landholdings because the excess landowners will continue to farm as before and will forego the use of storage provided by Pine Flat. They will simply utilize natural flow water from Kings River, stored water from non-Federal imported water and ground water. Approximately 550,000 acres of the service area has been subject to reclamation law since 1964 and, although nearly 70,000 acres is in excess status, not one recordable contract has been executed. These excess landowners have simply refused to accept project water (i.e., stored water) rather than agreeing to breakup their farms and be subject to the ever changing rules and regulations of the Bureau of Reclamation.

(2) Tulare Lake Cannot Be Farmed In Small Tracts. Most of the very large farms are located in the 200,000 acre Tulare Lake bed. That area is not susceptible of being farmed in small tracts because of the frequent devastating floods (one year in seven), heavy, poorly-drained soil which makes farming operations difficult and expensive, poor to non-existent ground water and water rights not appurtenant to the lands. However, the Tulare Lake can continue to be farmed in large parcels without benefit of storage although at greater expense and inconvenience.

(3) The Federal Subsidy Will Not Result In Cheap Land Availability for Redistribution. The Federal subsidy is very small as 22 of the 28 entities have repaid all of the project construction costs allocated to them. The remaining six units still owe $2.8 million, but none of the excess lands therein receive stored water. However, the market value of those excess lands is virtually the same as lands that receive the benefit of storage.

(4) Disruption of Coordinated River Operations.

The Kings River is operated in a highly effective coordinated manner to minimize conveyance losses and maximize the beneficial use of water. Storage Operations Pools (storage space and water) were created to adjust for the impact of heavy losses caused by the longer irrigation runs during the hot summer months. If those units with substantial large land holdings are subject to the acreage limitation provisions of Reclamation Law, they will, in all likelihood, forego the use of storage and simply utilize their entitlement natural flow (an undisputed right which was recently reaffirmed by the Ninth Circuit Court of Appeals). This will remove a large block of, so called, "carrying water" from the coordinated summer irrigation runs which will increase the conveyance losses suffered by those units whose water remains in the river channel. In many years, the increased river channel losses sustained by the units with predominately small land holdings would be so great as to make it infeasible to deliver water during the summer growing season when it can be most beneficially used.

(5) Excessive Administrative Costs.

The administration of reclamation law with leasing restrictions, residency requirements and multi-district ownership limitations would impose a heavy financial burden on the local districts with large numbers of small landowners and few excess land holdings.

CONCLUSIONS:

The imposition of the acreage limitation provisions will not accomplish the stated objectives of Federal reclamation law because:

(a) Kings River water users have largely paid their share of Project costs so that there is little or no Federal subsidy remaining to be distributed to the greatest number of people.

(b) Stored water accounts for only a small portion of the total irrigation water requirements, thus the Project has not significantly increased the value of excess lands in the Kings River service area which minimizes the opportunity for "speculation" and "unjust enrichment."

(c) All excess lands were farmed before and they will be farmed in the future without Project water, if necessary, thus assuring that the breakup of excess lands will not take place.

Since no Federal purpose will be accomplished by imposing such limitations on the Kings River service area, but rather substantial harm will result, especially to small farmers and landowners, we urge that any legislation to reform Federal Reclamation law provide an outright exemption for the Pine Flat Project and other Corps of Engineers projects which are not integrated into a reclamation project. The language in the current versions of S. 1867 and H.R. 4265 will accomplish such an exemption.

Thank you for the opportunity to submit this testimony.

RECLAMATION LAW SHOULD NOT APPLY TO THE PINE FLAT PROJECT ON KINGS RIVER, CALIFORNIA

By Robert E. Leake, Jr. and Stanley M. Barnes, Civil Engineers

March 1981

A Synopsis and Update of the February 1980 Briefing Paper,
"The Pine Flat Project On Kings River, California,
Reclamation Law Should Not Apply"

During the 96th Congress, the concept of an exemption from the acreage limitation provisions of reclamation law for most projects constructed by the U.S. Army Corps of Engineers, including the Pine Flat Project on Kings River, California, was approved by the Senate and by the House Committee on Interior and Insular Affairs.

An exemption from acreage limitation for lands in the Kings River area receiving water from the Pine Flat Project was specifically supported in a November 19, 1980 letter from Secretary of the Interior Cecil D. Andrus to Morris K. Udall, Chairman of the House Committee on Interior and Insular Affairs. A copy of the letter is shown on page 3.

A summary of the principal facts supporting the position that reclamation law should not apply to the Pine Flat Project on Kings River, California, is as follows:

1. The Pine Flat Project is a flood control project, with incidental irrigation benefits, constructed by the U.S. Army Corps of Engineers pursuant to the Flood Control Act of 1944.
2. The Kings River Service Area was fully developed to irrigated agriculture prior to construction of Pine Flat Dam in 1954.
3. The United States has no water rights on Kings River and does not own or operate any of the water diversion or distribution facilities.
4. All of the Kings River water rights have been locally owned for more than fifty years — in some cases, for more than a hundred years.
5. All of the irrigation diversion and distribution facilities were financed and constructed by the local water users at a cost of more than $70 million. The current value of these locally constructed facilities is more than $500 million.
6. Only about one sixth (1/6th) of the total irrigation water supply for the Kings River Service Area is provided from water stored in Pine Flat Reservoir. The remainder is provided from the unregulated flow of Kings River, from imported water supplies and from groundwater.

7. Those portions of the Kings River Service Area in which large landownerships are common have fully repaid their respective shares of the project cost allocated to irrigation benefits. The areas in small landownerships have repaid most of their shares of the costs and have contracted to repay the remainder. There is, therefore, no federal subsidy to the large landowners and only a very limited subsidy to the small landowners.

8. Continually and consistently, since the years prior to the Pine Flat Project's authorization in 1944, the local interests have made it clear that they preferred no Federal project at all, rather than a project under reclamation law.

9. For many years, the local interests were repeatedly assured by the highest officials of the U.S. Department of the Interior that repayment of the construction charges allocated to irrigation would terminate any possible application of reclamation law to locally owned water stored in Pine Flat. This long standing policy was dramatically reversed in 1961.

10. Due to periodic flooding and other factors, farming in small parcels is not feasible in the Tulare Lake Area, the principal area of large landownerships. Conditions of flood, drought and normal water supply in the Tulare Lake Area since completion of Pine Flat Dam in 1954, including the 1980 flood, are shown on page 4.

11. Application of the acreage limitation provisions of reclamation law to the Pine Flat Project will not result in the breakup of large landownerships, either in the Tulare Lake area or in other portions of the Kings River Service Area. The large landowners would simply return to pre-project conditions, foregoing the use of Pine Flat Reservoir storage and utilizing their Kings River water rights on an unregulated basis.

12. To operate Kings River with the use of Pine Flat Reservoir storage for non-excess (smaller) landowners, and without the use of such storage for excess (larger) landowners, would result in greatly increased river channel losses for all water users.

13. The widespread support for exemption of the Pine Flat Project and the Kings River Service Area from application of reclamation law is evidenced by virtually unanimous approval of the California State Legislature, local cities, counties and editorial support of newspapers.

Average earnings of full-time hourly farm employees in the Tulare Lake Area are now about $14,000 per year. In addition, employee related expenses and fringe benefits averaging an additional 36% of basic wages are provided. These include medical insurance, life insurance, Social Security, Worker's Compensation insurance, unemployment insurance, a generous retirement income program and paid holidays and vacations.

For more detailed information, see the briefing paper, "The Pine Flat Project on Kings River, California, Reclamation Law Should Not Apply," by Robert E. Leake, Jr. and Stanley M. Barnes, February 1980.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

November 19, 1980

Honorable Morris K. Udall
Chairman
Committee on Interior and
 Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Your letter of September 30 pertaining to H.R. 6520, the Reclamation Reform Act of 1980, has been held at my desk awaiting an indication that Congress would act on this needed legislation before adjournment. It now appears that the House may well resolve the issue so permit me to respond to the Army Corps' provision of the bill.

Although we oppose the blanket exemption sought by some interests, I have revised our position with regards to the Kings River region in California. This is a unique area and difficult to understand unless you have actually visited the entire project as both you and I have done.

I have concluded that in the Tulare Lake Basin small-scale farming is not economically feasible. The high risk of economic loss is a practical and unavoidable obstacle for which there is no remedy now or in the foreseeable future. Only large farming operations can financially sustain the high costs of diverting the flood waters into selected large tracts of land divided into cells (and have the land to do so). The costs of having this acreage underwater for long periods of time and the financial loss of the crops in the flooded areas are financial risks which can only be offset against other profitable operations. Without large farms in Tulare Lake, large amounts of acreage would not be in agricultural production, and that would in no way further the purposes and goals of the reclamation program.

Based upon additional and confirmed information, we have made two significant factual findings which compel us to support application of a Corps exemption of Kings River.

First, almost 200,000 of the total 1.1 million acres irrigated from the Kings River are located in a flood plain known as Tulare Lake Basin. Despite the construction of the Pine Flat Dam for flood control purposes, this basin continues to be inundated by massive flooding every few years. There is also more frequent and serious flooding between the large flood years, such as this year when there were large crop areas inundated.

Second, in the remaining 80 percent of the area irrigated from the Kings River outside the Tulare Lake Basin, there are over 46,000 nonexcess ownerships that are in farming operations similar to those in most other areas in the Central Valley Project where family farming predominates.

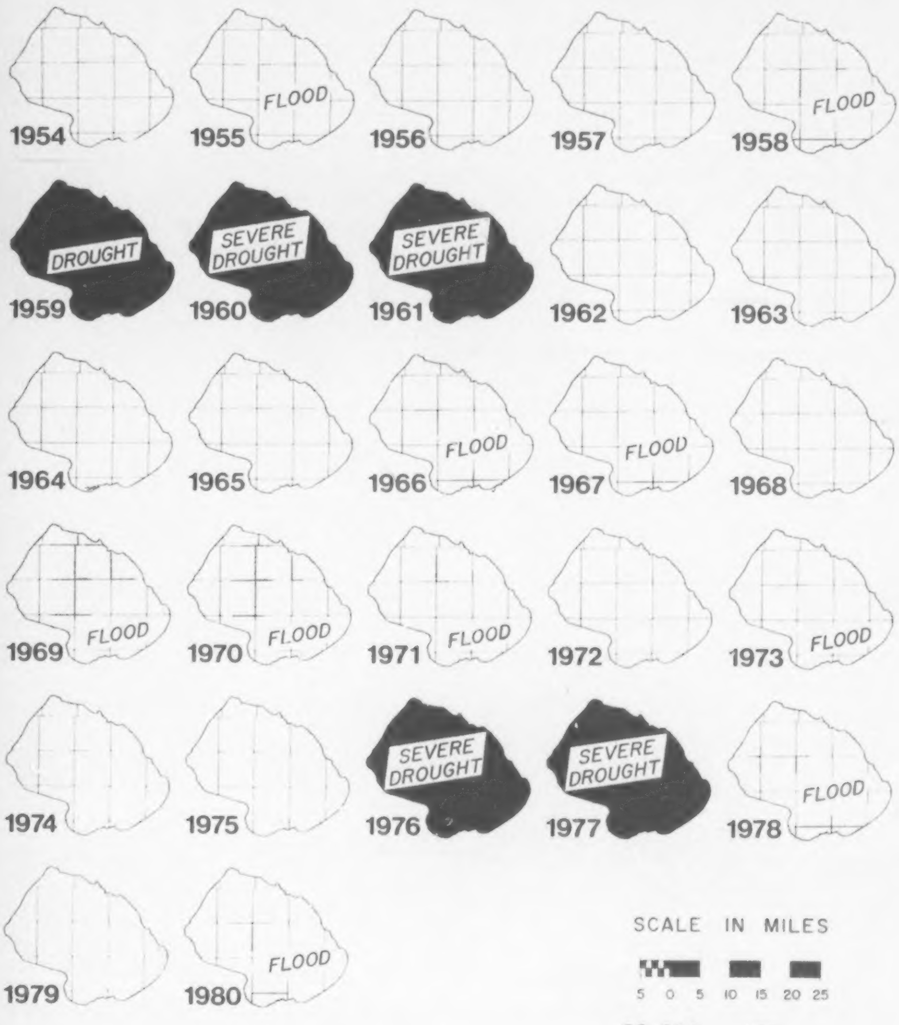
There are 868 owners of excess land in the Kings River service area with the largest in the Tulare Lake Basin where almost one-half of the excess land is situated. These lands are in farm operations which could operate on a "run of the river" schedule and be exempt from Reclamation law, but such a procedure would impair the productivity of the small farm operations that are upstream of the Tulare Lake Basin.

I, therefore, support the exemption of the lands in the Kings River area receiving water from the Corps of Engineers Pine Flat Dam from acreage limitation. To do otherwise would be irresponsible and would most likely jeopardize the many small operators to get at a few large operators.

Sincerely,

Cecil D. Andrus
Secretary of the Interior

CONDITIONS IN THE TULARE LAKE AREA SINCE COMPLETION OF PINE FLAT DAM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The CHAIRMAN. Thank you very much.

Mr. Enersen.

STATEMENT OF BURNHAM ENERSEN, ON BEHALF OF THE NORTH KERN WATER STORAGE DISTRICT

Mr. ENERSEN. Mr. Chairman, thank you for the opportunity to appear. May I add my word of congratulations and compliments to you and your fellow committee members for taking such definitive action and I am looking forward to prompt enactment of legislation which has been badly needed as Mr. Leake said, for about 40 years.

I am a San Francisco lawyer appearing on behalf of North Kern Water Storage District which is a public district owning substantial water rights in trust for its landowners on the Kern River in California, and a part of the Isabella project service area.

Appearing with me are Milo E. Hall, president of the board of directors of the district; A. Cameron Paulden, Esq., who is its general counsel, and Charles H. Williams, chief engineer of the district and the water master on Kern River.

I am also authorized to speak on behalf of the Buena Vista Water Storage District and the Kern Delta Water District, each of which owns substantial water rights on the Kern River.

I have submitted my statement for the record. It contains a rather detailed description of the Isabella project on Kern River which is one of the four Corps of Engineers' projects mentioned by many of the witnesses.

This particular project, the Isabella project, is the same as the Kings River project which Mr. Quist and Mr. Leake have briefly described, in all of its characteristics except it is on a considerably smaller scale.

These public districts owning the water rights on Kern River paid to the Government in cash the full amount of the cost of the project allocated to irrigation benefits on the day when the contract for use of the storage became effective.

We are particularly interested as you can imagine in the payout provision of your draft bill as we are also interested in the exemption of the Corps' projects.

My statement also includes a fairly detailed history of the payout principle, its administrative application over a period of more than 50 years under administrations of both political parties and it includes several instances of congressional approval of the payout principle.

I might say this history of the payout principle is the most comprehensive and most complete that has been assembled as far as I am aware. I hope it will be of use to your committee.

Mr. Chairman, the people for whom I am speaking support in principle the provisions of S. 1867. We also are in favor of the amendments presented by the Farm Water Alliance with whom we have been cooperating.

In closing, Mr. Chairman, I would like to make note of the many expressions during this morning of people who talk about the number of children they have so they can have a farm of a certain size.

I would conclude the present law, the 1902 act, really does not promote the family-size farm. It really promotes the farm-size family.

Thank you.

[The prepared statement of Mr. Enersen follows:]

Before the

COMMITTEE ON ENERGY AND NATURAL RESOURCES

of the

UNITED STATES SENATE

December 10 and 11, 1981

STATEMENT OF BURNHAM ENERSEN

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The Pay-Out Principle Under Reclamation Law - A History of Administrative Application and Congressional Approval of the Pay-Out Principle over a 50-year Period Pages 11 - 53

December 10, 1981

Burnham Enersen
3 Embarcadero Center
San Francisco, Ca. 94111
Phone: 415/393-2222

Before the

COMMITTEE ON ENERGY AND NATURAL RESOURCES

of the

UNITED STATES SENATE

December 10 and 11, 1981

STATEMENT OF BURNHAM ENERSEN

Mr. Chairman and members of the Committee:

My name is Burnham Enersen. I am a San Francisco lawyer appearing on behalf of North Kern Water Storage District, a public district which owns substantial water rights in trust for its landowners on the Kern River in California.

Appearing with me are: Mr. Milo E. Hall, President of the Board of Directors of the District; A. Cameron Paulden, Esq., General Counsel for the District, and Mr. Charles H. Williams, Chief Engineer of the District and Water Master of Kern River.

I am also speaking on behalf of Buena Vista Water Storage District and Kern Delta Water District, each of which owns substantial water rights on Kern River.

SUMMARY

The Isabella Project on Kern River was authorized by the Congress in the Flood Control Act of 1944, and completed by the Corps of Engineers in 1954. It consists of a dam and reservoir across the main stem of the Kern River in the mountains northeast of Bakersfield, California. The primary purpose of the project is flood control. The heavy springtime snow-melt runoff is impounded behind the dam to protect the City of Bakersfield and environs from flood damage.

Long before the Isabella Project was authorized, the North Kern District and its predecessors and other public and private entities owned all of the water rights on Kern River and put such waters to beneficial use for irrigation purposes. Before the turn of the century, a complete system of diversion works and hundreds of miles of canals and ditches had been constructed with private capital to convey the water from the river channel to the farmlands.

Prior to the completion of the Isabella Project, the springtime runoff had been stored in the underground, and in a large, shallow artificial lake called Buena Vista Lake on the floor of the valley below Bakersfield. In times of extremely heavy runoff, some of the water reached the Tulare Lake Basin and was stored there.

When Isabella Reservoir became a reality, the public districts owning the water rights entered into negotiations with the Federal Government to obtain the privilege of storing their irrigation water behind the Isabella Dam during the spring runoff period and releasing it to the farmlands during the summer months. Storage in the Isabella Reservoir would obviously be more efficient than storage underground and in the shallow sun-drenched Buena Vista Lake and Tulare Lake Basin. The public districts told the Government they did not want to take advantage of interest-free financing under Reclamation Law, because much of the irrigated land was in large farms whose owners were not willing to accept the acreage limitation features of Reclamation Law. They were willing instead to pay their full share of the construction cost in cash as soon as they obtained a storage contract. They were told that under the "pay-out principle" such a cash payment would relieve them of the acreage limitations.

When the project was completed in 1954, the Corps of Engineers, the Bureau of Reclamation, and the Bureau of the Budget determined that $4,573,000 was the portion (21.7%) of the construction cost properly allocable to irrigation benefits. The districts paid this sum to the Government in cash when their contract was executed in 1963. There was no reduction under the "ability to pay" concept.

Our principal message for this Subcommittee, Mr. Chairman, is to tell you that the imposition of acreage limitations in the Isabella Project service area simply will not work. It will not cause the break up of large farms. The farmers will cease storing their irrigation water in the

Isabella Reservoir and will revert to their pre-project operating methods, that is, storing their water underground and in shallow downstream reservoirs. The result will be a less efficient and more costly method of operating, but the farmers will consider this far preferable to selling their land.

The average size of the large farms which produce about 60% of California's ten-billion-dollar annual agricultural crop is approximately 3,000 acres. I ask you, Mr. Chairman and members of the Subcommittee, if you think the owner of a 3,000-acre, highly efficient, very productive farm would agree to sell 2,840 of his acres at far below market value in order to obtain the right to store his irrigation water for his remaining 160 acres in the Isabella Reservoir. Since the farmer owns enough water to irrigate the entire 3,000 acres, you know what his answer would be, and you do not have to be a professor of Economics or a mathematical genius to understand his reasons. He would tell the Government to use its reservoir for flood control purposes only, and he would handle his irrigation water just as he did before the reservoir was built.

So there is no way that the imposition of acreage limitation provisions in this area could accomplish its intended purpose of creating so-called family-size farms.

On the contrary, the imposition of acreage limitations would have very serious adverse effects upon the recreational value of the lake behind the dam, because the reduction in irrigation water storage would substantially reduce the size of the lake. This lake has become the most popular water-oriented inland sports area in Southern California. It supports a substantial lake-side population, and it provides fishing, boating, swimming, water skiing, and hunting for a million or more visitor-days every year. A reduction in the size of the lake will make it far less attractive and far less useful than it is now.

A reduction in storage use of the reservoir will also reduce hydro-electric power production in the plants below the dam.

In short, imposition of acreage limitations will accomplish no good and will do much evil. Whatever one's social policies or objectives may be, the stark realities of this situation must be recognized. Acreage limitations just won't work on Kern River.

For these reasons, the water districts for whom I speak are strongly in favor of the provisions of H.R. 4265 and S. 1867 which will exempt Corps of Engineers projects from Reclamation Law and those which re-establish the so-called "pay-out" principle.

The foregoing is a brief Summary of our statement. I ask that the complete statement, which contains further information about the Isabella Project and a history of the "pay-out principle", be made a part of the record of this hearing.

Thank you Mr. Chairman and members of the Subcommittee.

THE ISABELLA PROJECT

The Kern River originates in the high Sierra Nevada, on the slopes of Mount Whitney. It runs down the western slope of the mountains to the southerly end of the floor of the San Joaquin Valley, and through the City of Bakersfield. Its waters are and for nearly a century have been used to irrigate some 370,000 acres of very fertile farm land.

In years of heavy snowfall in the winter and rapid snow-melt in the spring, the waters of the Kern River often caused very severe flood damage, principally in the City of Bakersfield which lies astride the main channel of the stream. Because of the need for flood protection, the Corps of Engineers examined the Kern River system during the 1930's and concluded that a large dam and reservoir should be created on the main stem of the stream up in the mountains for the principal purpose of impounding the flood waters and avoiding flood damage. The Bureau of Reclamation also made a study and contended that the principal benefits to be obtained from such a dam and reservoir would be an improvement in the efficiency with which the water could be used for irrigation purposes, and therefore concluded that the reservoir should be built by the Bureau of Reclamation under Reclamation Law.

The resulting controversy between the two government agencies raged for several years and through several sessions of Congress. A parallel battle was in progress regarding the similar situation on the Kings River, situated about a hundred miles north of the Kern. Extensive Congressional Committee hearings were held, commencing in 1940, in efforts to resolve the controversy, which was at times very bitter and heated. Secretary Ickes sought and obtained the support of President Roosevelt, who sided with the Bureau of Reclamation. The local interests on each stream, on the other hand, favored the Corps of Engineers.

During the numerous Congressional hearings, the local interests on each stream, consisting principally of the owners of the water rights and the farms, presented extensive testimony supporting the Corps of Engineers. Their contention was that the principal benefit of each project would be flood control, and that accordingly the project fell within the normal functions of the Corps of Engineers. The testimony of the local interests also strongly opposed the application of Reclamation Law to the two projects because it would involve the enforcement of the acreage limitations provisions.

The local interests also testified that they did not seek the financial subsidy represented by the interest-free forty-year installment financing available under Reclamation Law. They said they would pay in cash for their shares of the construction costs.

The agricultural area irrigated by the waters of each stream had been developed in the late 1800's by the farmers themselves. They had built a complete system of diversion works and hundreds of miles of canals and ditches, taking the water out of the stream and distributing it to the farmlands. The farmers had done all of this at their own expense without any governmental assistance. All of the water of each stream was fully appropriated by the farmers, and neither the United States Government nor the State of California owned any of it. There was no public land in either area. All of the land served or capable of being served by the irrigation water had been in private ownership for three-quarters of a century, during which time the land ownership pattern had been established by the normal functioning of normal economic factors. There were a good many farms containing over 160 acres. Each area was highly productive, efficient, and intensively cultivated, and produced a great variety of important crops. In fact, each of the areas was among the most productive agricultural centers in the entire country.

The only benefit which the irrigators on either stream could or would derive from the construction and operation of an upstream dam and reservoir would be the temporary storage of some of their spring run-off water in the reservoir and the release of that water during the summer months, thus increasing the efficiency of the use of the water for irrigation purposes. However, the local interests on both streams were so strongly opposed to the application of Reclamation Law in their areas that they would rather have no federal project at all than have one which would be subject to the acreage limitation provisions of Reclamation Law.

In the end, the Corps of Engineers and the local interests won out. The 1944 Flood Control Act authorized each of the projects as a flood control project to be constructed by the Corps. The local interests were, of course, extremely happy with this result, but their happiness was short-lived. Even before construction commenced, President Truman issued an executive order requiring the Bureau of Reclamation, rather than the Corps of Engineers, to negotiate the contract with the local interests on Kings River for the purchase of the right to store their irrigation water in the Pine Flat Reservoir. In 1958 the Attorney General ruled to the same effect on the Kern River Project. (41 Op. A.G. 377)

However, both groups were repeatedly assured by representatives of the Bureau of Reclamation and by several high officials of the Department of the Interior, that under the so-called "pay-out" principle the acreage limitation provisions of Reclamation Law would not apply to those portions of the service area which paid their share of the construction cost in full and in cash at the outset, rather than taking advantage of the forty-year, interest-free installment financing which was available under Reclamation Law. The acreage limitations were regarded as the quid pro quo for the very substantial subsidy which this interest-free financing provided, and a cash pay-out eliminated the subsidy and with it the acreage limitation. The Bureau representatives stated that the pay-out principle was a well-established and longstanding official interpretation of the Reclamation Law.* They assured the local interests on each river that any landowner who paid his allocated share of the construction costs in cash at the outset would be free of the acreage limitations.

In reliance upon these assurances, the local interests in both areas carried out their negotiations with the Bureau of Reclamation for several years. The local interests on Kern River announced at the outset that they would pay the entire amount of the construction cost allocated by the United States to the irrigation benefits of the Isabella Project in cash as soon as the contract with the United States became effective. They did not ask for and did not receive any financial subsidy. The units on Kings River containing excess acreage were also willing to pay their shares in cash.

The negotiations proceeded on the basis of the pay-out principle. Early in 1960, negotiations were completed for a contract for the use of storage space in the Isabella Reservoir on Kern River in return for a cash payment of $4,573,000 which was the full amount of the project cost allocated by the United States to irrigation benefits. The contract was approved by the local interests, by the Regional

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* The latter part of this Statement consists of a detailed history of the administrative application and Congressional approval of the "Pay-out Principle" over a period of fifty years.

Office of the Bureau of Reclamation in Sacramento, by the Commissioner of Reclamation in Washington, by the Solicitor of the Interior Department, and by the Undersecretary of the Interior. On November 4, 1960, it was submitted, along with a similar contract on Kings River, to the Secretary of the Interior, the Honorable Fred A. Seaton, for final approval. He gave his approval on the last day of the Eisenhower administration, January 19, 1961, but he withheld authority to execute the contracts pending a review of the pay-out principle by the Department of Justice.

On December 26, 1961, the new Solicitor of the Department of the Interior in the Kennedy administration, the Honorable Frank J. Barry, issued an elaborate formal Opinion declaring that the pay-out principle was not authorized by Reclamation Law. (68 I.D. 372) The pending contracts were then rejected by the Bureau of Reclamation.

In the meantime the Pine Flat and Isabella Reservoirs, which were completed in 1954, had been operated under annual, interim contracts with the irrigation interests, who paid $1.50 per year for each acre-foot of their irrigation water stored in and released from the reservoirs. The interim contracts from 1956 onward provided that the excess of this annual fee over the allocated share of actual operating costs would be credited toward the payment of the capital obligation if and when a permanent storage contract should be executed during the one-year period covered by the contract.

By the time Mr. Barry rejected the Isabella Project contract at the end of December, 1961, the amount of the credit accumulated by the Kern River people was slightly over One Million Dollars - almost one-quarter of their total obligation. The credit available to the Kings River people was even larger. As noted above, these credits were to be available only if a permanent storage contract acceptable to the Bureau of Reclamation should be executed during the one-year period covered by the latest interim contract. The Bureau of Reclamation then let it be known that unless contracts acceptable to the Bureau were promptly executed by the local interests, the credits would be forfeited. Thus the local people were compelled to accept the terms offered by the Bureau of Reclamation, including acreage limitation provisions, in order to avoid losing these very large credits.

The contract for use of the Kern River Project for storage of irrigation water called for a cash payment of $4,573,000 representing the portion of the construction cost which the Government allocated to irrigation benefits. There was no reduction in the obligation under the "ability to pay" concept. This entire sum was paid in cash on the very first day that the contract became effective, March 31, 1965. The money was raised by bond issues which were approved by the unanimous vote of the landowners, both large and small, in the Kern River service area. The bonds are still outstanding and the landowners pay assessments which produce funds for interest and principal payments as they fall due.

Early in the post-1961 negotiations the Bureau had announced that it would arrange to have a "Court Test" of Solicitor Barry's Opinion regarding "Pay-out". Accordingly, the contracts which were eventually executed provided that the acreage limitation provisions of Reclamation Law would apply to the lands irrigated with water stored in the reservoirs if, but only if, required by the laws of the United States. Shortly after the Kings River contract was signed, the United States filed suit in the United States District Court in Fresno, California, seeking to enjoin one of the Kings River irrigation entities* which had paid its share of the construction costs in full and in cash, from serving stored water to excess lands. After a long trial, the District Court denied that injunction in 1972, holding first that Reclamation Laws did not apply to the Pine Flat Project on Kings River, and second, that if such laws did apply, the pay-out principle was valid and the contracting entities which paid their share of the construction cost in full were relieved of the acreage limitation provisions. (340 F. Supp. 1185)

This decision was appealed by the Government to the United States Court of Appeals for the Ninth Circuit sitting in San Francisco. On April 5, 1976, some two and one-half years after the appeal was submitted for decision, the Court of Appeals filed a 52-page Opinion reversing the District Court on both points, i.e., holding that the Kings River Project was subject to Reclamation Law, and that the pay-out principle was invalid. (535 F.2d 1093) This Opinion is well written, it is plausible, and it gives evidence of a great deal of independent research outside of the trial record. To one who knows nothing about the subject the Opinion would seem logical, well-reasoned, and presumably correct. To those of us who know the subject, however, the Opinion is a travesty on justice. Its reasoning is fallacious, it ignores extremely important evidence of Congressional approval of the pay-out principle, it disregards important issues, and its conclusions are dead wrong.

It is the most shocking miscarriage of justice which I have personally witnessed in over 50 years of law practice.

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* Tulare Lake Canal Company

However, the Opinion is not yet final, and no injunction has been issued. A petition for rehearing was filed in 1979 and is still pending. The petition seeks a reexamination of the legal issues in light of the new guidelines for construction of the Reclamation Laws laid down by the Supreme Court in the so-called "New Melones Case", California v. United States (1978), 438 U.S. 645. The petition was argued before the Court of Appeals in November, 1980. The Court has not yet ruled upon this petition.

No such lawsuit has ever been filed by the Government as to the Kern River Project, but we assume that one will be instituted when the Government gets around to it.

If the same Court should eventually hold that the Kern River Project is subject to acreage limitations the result would be chaotic. The farmers with excess acreage have announced that they would cease to store their water in the reservoir - even though they long ago paid in full for their right to do so.

I understand some question has been raised as to whether the farmers really would give up their right to store water in Isabella Reservoir if acreage limitations were imposed in the Kern River service area. I suggest that anyone who questions this conclusion try to put himself in the position of an owner of a large farm with an adequate water supply, faced with this problem. The average size of the large farms which produce about 60% of California's ten-billion-dollar annual agricultural crop is approximately 3,000 acres. Consider the situation of the owner of a 3,000-acre, highly efficient, very productive farm, and a Kern River water right providing an adequate supply for irrigation of the 3,000-acre farm. If acreage limitations were imposed as a condition to storing his irrigation water in Isabella Reservoir, he would be faced with this dilemma: should he agree to sell 2,840 of his acres, together with a proportionate part of his water right, at a price far below market value, in order to be able to store irrigation water for his remaining 160 acres in the Isabella Reservoir? One does not have to be a professor of Economics or a mathematical genius to know what his answer would be. Obviously he would discontinue storing his irrigation water in Isabella Reservoir and would go back to pre-project operations, allowing his water to flow downstream in the spring, putting it in spreading ponds, storing it underground, and pumping the water back up to the surface for irrigation use in the summer. This would be costly, wasteful, and inefficient, and would consume vast quantities of energy for pumping. It would increase the cost of production of food and fiber, with inevitable increases in prices to the consumers. There would be no break up of large land holdings, and the assumed purpose of the acreage limitations would not be accomplished.

I understand some question has also been raised as to whether the individual farmers can actually control the storage of their share of the water held in trust for them by the public districts. The answer is that they positively do have this control. Under California law, all voting power in water storage districts, such as North Kern Water Storage District, is vested in the landowners who vote in proportion to their respective land values. There is no voting on a per capita basis, and there is no voting by residents who are not landowners. This voting system was recently approved by the Supreme Court of the United States (Salyer Land Company v. Tulare Lake Basin Water Storage District (1973), 410 U.S. 719).

The decision of large farm owners to discontinue storing their irrigation water in Isabella Reservoir would greatly reduce the value of the lake behind Isabella Dam as a recreational area. In the twenty-five years during which the project has been operating, Lake Isabella has become one of the most popular recreational facilities in Southern California. Boating, fishing, swimming, water skiing and other aquatic sports, as well as hunting, have attracted an average of over one million visitor-days per year. The lakeside population has grown to over 8,600 permanent residents who are dependent upon the lake to support their economy. All this would be seriously damaged if the farmers should cease to store their water in the reservoir - as they have said they will do rather than sell their land under Reclamation Law.

The discontinuance of storage of the large farmers' irrigation water would have another very unfortunate consequence: it would substantially reduce the power production in the hydroelectric power plants below the dam. The reason is that the plants could not utilize the portion of the unstored spring runoff which would exceed their operating capacity, and that portion would flow past the plants without being put through the turbines. The energy thus lost would be irretrievable.

In short, the enforcement of acreage limitations in the Isabella Project service area would accomplish no good and do much evil.

THE PAY-OUT PRINCIPLE UNDER RECLAMATION LAW

A History of Administrative Application and Congressional Approval of the Pay-out Principle over a 50-year Period

In his letter to Senator Jackson dated July 23, 1979, regarding S. 14 in the 96th Congress, Secretary Andrus treated the pay-out principle as though it were something brand new - a novel, and to him a thoroughly objectionable attempt to write a new exemption into the acreage limitation provisions of Reclamation Law. He completely ignored the fact - and it is a fact - that for almost fifty years the Department of the Interior, under both Democratic and Republican Administrations, consistently applied the pay-out principle as a proper interpretation of Reclamation Law. During this period the pay-out principle was extensively utilized in literally dozens of reclamation projects. At least a hundred contracts specifically provided for relief from acreage limitations upon completion of payment of construction charges and included options for advance payment, or "prepayment" as it is sometimes called. During the same period Congress itself approved the pay-out principle as a correct interpretation of Reclamation Law.

Since the pay-out principle functioned as a part of the Reclamation Law for almost half a century, without causing any disruption or impairment of the Reclamation program, Secretary Andrus' fear that the reinstatement of the pay-out principle might do so is wholly unfounded.

The use of the pay-out principle was suspended in 1961 when the new Solicitor of the Department of the Interior in the Kennedy Administration, the Honorable Frank J. Barry, opined on December 26, 1961, that the pay-out principle was not a valid interpretation of Reclamation Law. (68 L.D. 372).

The question was then litigated in the case of United States v. Tulare Lake Canal Company involving the Pine Flat Project on Kings River. The District Court disagreed with Solicitor Barry and upheld the validity of the pay-out principle as a proper interpretation of Reclamation Law. (340 F. Supp. 1185). On appeal, however, the United States Court of Appeals for the Ninth Circuit reversed the District Court and agreed with Solicitor Barry in a decision issued April 5, 1976. (535 F. 2d 1093).

As noted above, the decision is not final, and a petition for rehearing is pending.

The history of the pay-out principle will now be reviewed in chronological sequence from 1913 to 1961.

* * * * *

From the very beginning of the Reclamation program, the acreage limitation provisions of Reclamation Law have been regarded as the quid pro quo for the financial subsidy accorded to Reclamation project landowners by providing for repayment of construction charges in instalments over a 40-year period without interest. The effect of this interest-free financing is to give the landowners a very substantial financial subsidy. The purpose of the acreage limitation is to confine the benefits of this financial subsidy to relatively small farms. However, under the pay-out principle a landowner who chooses to forego the interest-free financing and instead elects to pay his share of the construction costs in cash - i.e., to "pay out" - is relieved of the acreage limitation.

A concise description and explanation of the pay-out principle appears in a letter from the Honorable Oscar L. Chapman, Secretary of the Interior in the Truman Administration, to the Honorable William M. Whittington, Chairman of the Committee on Public Works of the House of Representatives, on November 2, 1950, commenting upon (and objecting to) the then-pending H.R. 7915 which would have given the water users in the Kings River ("Pine Flat") Project a "discount for cash" if they exercised the privilege of prepaying their 40-year instalment obligation. Secretary Chapman said:

> "The Congress long has recognized and permitted the principle of prepayment of reimbursable allocations to irrigation. This principle has been recognized since the enactment of the Reclamation Act of 1902, but in no instance has the Congress permitted a discount for cash in advance. It has stated that where the water users wish to be relieved of the conditions imposed by the Federal reclamation laws, they may do so by prepaying the construction charges. The policy of the Federal Government in this respect apparently has been that in making interest-free money available to the water users it expected something in return which would benefit the nation as a whole. With ample justification, it expected to derive these benefits from the conditions imposed by the reclamation law itself, not the least important of which are the excess land and antispeculation pro-

> visions. The Congress did not preclude participation in the irrigation benefits by those who did not wish to meet the conditions imposed by it, but did provide that they should not derive the benefit of the interest-free money. To accomplish this, provision was made for the prepayment of construction charges."

The history of the administrative application and Congressional approval of the pay-out principle begins in 1913 and is very extensive. It demonstrates a consistent application of the pay-out principle over a period of nearly half a century. In the following chronological recital of this history, especial attention is directed to the Congressional recognition and approval of the pay-out principle in 1950 and 1956.

1913

In the case of Amaziah Johnson (42 L.D. 542) the Department held on August 11, 1913 that the owner of one farm unit in a Reclamation project could purchase another unit in the same project upon showing that all instalments on account of the water right contracted for in connection with the latter tract, had been paid in full.

In Keebaugh and Cook (42 L.D. 543) the Department held on October 31, 1913 that the owner of a farm unit on which the water right charges had not been paid in full could not acquire another tract and secure water for it unless payment in full were made for the water right for the additional tract.

These two decisions clearly and specifically tie the acreage limitation and the repayment obligation together, so that the limitation applies until the repayment obligation is discharged, and it then terminates.

1914

A question arose in the Department of the Interior under Section 3 of the Act of August 9, 1912, the pertinent portion of which reads as follows:

> "Provided, That no person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable land for which entry or water-right application shall have been made under the said reclamation act of June seventeenth, nineteen hundred and two, and acts supplementary thereto and amendatory thereof, before final payment in full of all installments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior, as the limit of area per entry of

> public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said acts nor a water right sold or recognized for such excess;"
> [Emphasis supplied]

The question was whether the 160-acre limitation continued in effect after full payment of construction charges. The matter was referred to the Chief Counsel of the Reclamation Service, Mr. Will R. King, who, on July 1, 1914, rendered an opinion to the Secretary of the Interior recommending that the proviso should be construed to permit water to be furnished for land on which payment in full of construction charges has been made "even when more than 160 acres of such land is owned by one person". The opinion was approved by the Honorable A. A. Jones, First Assistant Secretary of the Interior, on July 22, 1914, and it was published in 1915 in the decisions of the Department of the Interior relating to public lands. [43 Land Decisions 339]. The text of the pertinent portion of Mr. King's opinion is as follows:

> "Thus far there seems to be no difficulty in determining the meaning of the proviso, but some expressions in the departmental decisions lead to the inference that a person holding a tract upon which payment has not been made in full, may not purchase paid-up water rights for more than 160 acres.
>
> "This seems to be based upon the construction placed upon the following portion of the proviso, 'nor in any case in excess of 160 acres, nor shall water be furnished under said acts nor water right sold or recognized for such excess.' If this expression is construed as applying to the lands for which water right has been paid in full it has the effect of a provision by Congress

limiting water rights for private land holdings, after full payment, to water rights for 160 acres. In other words, it is a provision which limits to 160 acres the area for which a man may hold an appurtenant water right even after he has discharged all his obligations to the Government, except for operation and maintenance. Such a limitation is a radical departure from all the public land laws, as apparently there never has been any intent by Congress to limit the amount of land which a man may own after having complied in full with the provisions of the law in order to acquire the title, and as the water right becomes on final payment an appurtenance to the land the same rule governs.

"It would seem that a construction of a statute constituting so wide a departure from the previous conditions regarding the rights of individuals should not be adopted in the absence of a plain intent expressed in the law, as it would not only render the law subject to question on the ground of constitutionality, but would also introduce an entirely new system of land ownership in reclamation projects not applicable to any other public lands or any other lands acquired from the United States.

"On the other hand, there is a rational interpretation of this language that is in full harmony with prior legislation and the evident intent of the reclamation law, namely, that a person who holds a farm unit shall not be permitted, before full payment has been made on the appurtenant water right, to acquire other lands with appurtenant water rights unless the water right charges on the latter have been fully paid; similarly that a person may hold private lands with appurtenant water rights up to the limit of single ownership fixed for the project in one or more parcels before full payment of the water right charge, but may not acquire other lands with appurtenant water rights unless the water right charges thereon have been paid in full. Furthermore, that the limit of area of the farm units and of single private land holdings to which water rights are appurtenant (and as to which water right has not been paid in full) shall in no case exceed 160 acres.

> "I deem the language of the proviso to be fully in accord with an intent on the part of Congress to make such a rule as to the area held in a farm unit or by single ownership under an uncompleted water right application.
>
> "It is therefore recommended that the proviso be construed as suggested and that it will accordingly permit the furnishing of water for land on which payment in full has been made of building and betterment charges even when more than 160 acres of such land is owned by one person, provided the annual charges for operation and maintenance are paid and all other requirements are complied with."

Particular attention is directed to the statement that a limitation which would survive complete payment of construction charges would be "a radical departure from all the public land laws". Attention is also directed to Mr. King's statement that such a limitation would not only raise constitutional questions but would "introduce an entirely new system of land ownership in reclamation projects".

1915

Of collateral interest by way of analogy, if not a direct precedent, is a ruling with respect to the residence requirements under Section 5 of the 1902 Act. The sentence of Section 5 which mentions the 160-acre limit for the use of water also contains a requirement that the landowner "be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood". In the case of H. G. Colton instructions were issued by the First Assistant Secretary of the Interior, Mr. Jones, on February 16, 1915, upon the question whether the residence requirement should apply to persons acquiring water right contracts by assignment. The decision was published in the same year, 1915, at pages 518 to 520 of Volume 43 of the Land Decisions of the Department of the Interior. Mr. Jones referred to the fact that apparently the assignor had not obtained a final water right certificate pursuant to Section 1 of the Act of 1912, which entitles an applicant to a water right certificate upon payment of all charges and compliance with certain other requirements. Mr. Jones concluded that the residence requirement of Section 5 did apply to assignees of water right contracts "unless prior to such assignment the final water right certificate contemplated by Section 1 of the Act of August 9, 1912, supra, has been issued". Thus, added significance was given to the complete payment of construction charges, namely, that the residence requirement as well as the acreage limitation provisions were thereby terminated.

This ruling with respect to the effect of payment of construction charges upon the residence requirement is of special significance because of the fact that the residence requirement appears in the same sentence of Section 5 of the 1902 Act as does the acreage limitation provision. The Department's interpretation of the Reclamation Laws as to these two requirements was therefore a consistent expression of the policy that the control of the United States over the ownership and occupancy of the land came to an end when the obligations due to the United States upon such land were paid in full.

This result is consistent with the general policy of all the public land laws -- the homestead laws, the Desert Land Act, the mining laws, and the Reclamation Laws. As said by Mr. King in his 1914 opinion (referring to all the public land laws):

> "* * * there has never been any intent by Congress to limit the amount of land which a man may own after having complied in full with the provisions of the law in order to acquire the title." [43 L.D. 340]

1919

The Salt River Valley Users Association of Phoenix, Arizona, made some inquiry of the director of the Bureau of Reclamation, Mr. A. P. Davis, with respect to landholdings under the Salt River Project. In his letter replying to the inquiry on November 6, 1919, Mr. Davis stated:

> "Of course, you are aware of the fact that where persons holding land have paid all proper charges they are not limited in acreage holdings."

1920

On July 1, 1920, Secretary John Barton Payne approved an amendment of the General Reclamation Circular so as to incorporate the substance of the instructions issued in 1914 upon the basis of the King opinion. This amendment was published in 1921 in Volume 47 of Land Decisions at pages 417 and 418. By this amendment, a portion of paragraph 76 of the circular was made to read as follows:

> "76. Lands which have been patented or which were entered before the reclamation withdrawal may obtain the benefit of the reclamation law. However, the landowner must be an actual *bona fide* resident on the land or occupant thereof residing in the neighborhood at the time of making water-right application. The Secretary of the Interior has fixed a limit of residence in the neighborhood at a maximum of 50 miles. This limit of distance may be varied depending on local conditions. After water-right application has been made and accepted (which constitutes a water-right contract), the applicant is not required to continue his residence on the land or in the neighborhood. A landowner may, however, hold rights to the use of water for more than one tract of patented land in the prescribed neighborhood at one time, provided that the aggregate area of such tracts upon which the construction charge has not been fully paid does not exceed the maximum limit established by the Secretary of the Interior nor the limit of 160 acres fixed by the reclamation law, on which water will be furnished. *The Secretary has decided that the area which may be held by any one landowner after the construction charges have been fully paid may exceed 160 acres.* (43 L. D. 339-341.) Water will not be furnished on a tract of patented land and a tract of unpatented land in the same ownership unless the water charges have been paid in full on one of the tracts. In other words, water will not be furnished on a tract of private land, regardless of the area and a tract of unpatented land in the same ownership at the same time unless all water charges on one of the tracts have been paid in full. A landowner who has made contract for the use of water in connection with 160 acres of irrigable land and sold the same, together with the water right, can make other and successive contracts for other irrigable lands owned or acquired by him."*

The foregoing language is identical with the first portion of Section 230.65 of the regulations of the Department of the Interior appearing in Title 43 of the Code of Federal Regulations. This language has been continuously in effect as the Regulation of the Department since 1920. One sentence of this 59-year-old Regulation is worthy of repeating for emphasis:

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* Emphasis supplied.

> "The Secretary has decided that the area which may be held by any one landowner after the construction charges have been fully paid may exceed 160 acres."

This sentence is still in the Regulations.

1922

In response to another inquiry about the Salt River Project in Arizona, the Honorable E. C. Finney, First Assistant Secretary of the Department of the Interior, on January 17, 1922, wrote to the Salt River Valley Water Users Association with respect to excess landholdings to which water was being furnished "without the requirement of full payment of construction charges on such areas". Mr. Finney instructed the Association to cease delivering water to such excess areas and to report the action taken to the Director of the Reclamation Service within 30 days. In this letter Mr. Finney quoted an earlier letter on the same subject dated December 20, 1921, as follows:

> "After a farm unit has been patented such land can be treated as any other private land and the owner thereof may hold rights to the use of water for additional private land, in one or more parcels, up to 160 irrigable acres, without full payment.
>
> "Before final certificate or patent issues for a farm unit it is not permissible for the entryman to acquire the use of water for another farm unit whether patented or unpatented, or a tract of private land regardless of the area, unless construction charges are paid in full on either the farm unit or all the private land.
>
> "It is not permissible for a private land owner receiving water from the project to take by assignment or otherwise an unpatented farm unit and receive water therefor unless construction charges are paid in full on either the farm unit or the private land."

With respect to a particular case of excess landholding in the Salt River Valley, the Assistant Director advised the same association on January 16, 1922, that the individual in question, Mr. Lutgerding, had no legal right to receive water for lands in excess of 160 acres "unless he pays in full the construction charge for such excess lands".

The particular significance of the instructions with regard to the Lutgerding matter is that it was a specific application of the principle that the excess landowner could, if he wished, prepay all of his construction charges so as to retain the excess lands and receive water for all such lands.

1923

With reference to newspaper publicity in the Salt River area about the Bureau's current activity in endeavoring to enforce the requirement for the disposition of excess acreage, the Commissioner of Reclamation, Mr. D. W. Davis, on October 22, 1923, wrote to the General Superintendent and Chief Engineer of the Salt River Valley Water Users Association, Mr. Cragin, to point out that certain of the local publicity was misleading. In particular, Commissioner Davis said that a certain statement to the effect that a holder of public lands could not receive water for private land, or vice versa, was not correct, but could be corrected by adding "unless the construction charges in full are paid on one class of land and all other requirements are fully complied with". In the same letter he suggested a statement which might be given to the newspapers for the purpose of furnishing correct information. This statement is as follows:

> "Holdings in a single ownership to which water may be furnished under the reclamation law are limited (a) to one farm unit which was entered under the reclamation law, and for which final certificate has not issued, or (b) to an area not exceeding 160 irrigable acres of land for which final certificate has issued, whether or not it had been entered under the reclamation law. If a person holds more than the limit in either class (a) or (b), or if he holds tract in more than one of these classes he is an excess land holder. No water will be delivered for the excess area in either class unless full payment of the construction charge has been made for the excess area; nor

> for land held in one class unless full payment of the construction charge has been made for the area held in the other class.
>
> "However, water may be furnished or a water right recognized where excess lands are acquired in good faith by descent, by will, or by foreclosure of a lien, for two years after acquisition and no longer."

1928

In reply to a suggestion from a lawyer in Klamath Falls, Oregon, Mr. J. H. Carnahan, that the Reclamation Law be amended as set forth to state specifically that excess lands could be held in a single ownership after construction charges are fully paid, Commissioner Elwood Mead wrote to Mr. Carnahan on January 27, 1928. Apparently the question had come up in some local litigation involving lands in the Klamath Irrigation District. Commissioner Mead discouraged the suggestion. His letter gave the following reasons:

> "I doubt the advisability or the necessity of the Department's recommending the enactment of such legislation. The potential opposition to which you refer in your letter would in all probability be aroused, no matter who introduces the bill. For the Department to recommend the enactment of the bill would seem to lend color to the opinion that the Department is dubious of its announced position, that under the present law the 160 acre limitation is not applicable after construction charges are paid in full. Fairness to the Members of Congress would require that the Secretary, in recommending the enactment of the legislation, give a full statement of the facts, including the fact that the precise point has been raised in pending litigation on the Klamath project.
>
> "We feel no reason here to doubt the correctness of the position taken on the point by the Department. If there is doubt, the construction given to the statute by the Secretary would be given weight by the courts in construing the present law. While it is regretted that it seems to be necessary

> to litigate the matter further in the courts without the aid of clarifying legislation, it is probable that it would require less effort to pursue the matter through the courts than to secure the enactment of the clarifying legislation which you desire. Should the court's decision be adverse, remedial legislation could then be considered."

It is to be noted that Commissioner Mead felt that there was no reason to doubt the correctness of the Department's position, and he went on to say that if there were doubt, the Department's construction of the statute would be given weight by the courts in construing the law.

On the same date Commissioner Mead wrote on the same subject to the President of the Enterprise Irrigation District, Mr. C. C. Lewis, in Klamath Falls, Oregon. Commissioner Mead said in part:

> "As to your second alternative suggestion: The Department has construed the 160 acre limitation of the Reclamation laws as applicable only during the time when the construction charges are still payable. In other words, the Department has held, in effect, that if a water user owns more than 160 irrigable acres he may receive water for his entire irrigable area if he pays the construction charges in full on the area in excess of 160 acres. The holding, so far as known, has not prior to the present litigation been tested in any judicial proceedings, but it seems so obviously correct that I do not feel that Congress should be asked for an enactment supporting the Departmental holding, unless the courts should fail to uphold the Department."*

1930

In answer to an inquiry relative to foreclosure of mortgages in Maricopa County in the Salt River Project in Arizona, Secretary Ray Lyman Wilbur wrote to Mr. Edward O. Clark, Associate General Solicitor of the Prudential Insurance Company of America, in Newark, New Jersey, on February 27, 1930, pointing out that after foreclosure, the mortgagee could hold more than 160 acres "on which the reclamation charges are not paid in full" for a maximum period of two years. Secretary Wilbur then quoted Section 3 of the Act of August 9, 1912, and closed his letter with the following paragraph.

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* (Note that in both of these letters the Commissioner of Reclamation said that "remedial legislation" could be considered if the Courts should fail to uphold the Department's interpretation of Reclamation Law. Section 106(a) of H.R. 4265 and Section 106(a) of S. 1867 are exactly that: remedial legislation to correct the Court's decision in United States v. Tulare Lake Canal Co. (1976), 535 F.2d 1093, disapproving the pay-out principle.)

> "As you will note, the statute is not applicable if the building and betterment charges due the Government are paid in full on the excess area. The Company could therefore hold the excess area upon which the building and betterment charges are not paid for two years after title was acquired. If it should be desired to hold the excess area after that period, it would be necessary to pay the building and betterment charges on the excess."

Again it is particularly significant that the Department of the Interior expressly authorized the excess landowner to prepay the unpaid construction charges as an alternative to selling the excess land.

1933

The same suggestion was made to Mr. Richard W. Young, General Counsel of the Federal Land Bank of Berkeley, California, by Commissioner Elwood Mead on December 11, 1933, in a letter which closed with the following sentence:

> "Of course the Bank could protect itself either by paying the construction charges in full on the excess lands or by having the owner transfer the title to the excess lands to a bona fide purchaser."

Commissioner Mead's letter is endorsed with a notation that a copy was sent to Senator Hayden.

1935

In response to an inquiry from Mr. W. N. Bagley of Chicago, Commissioner Mead wrote on June 13, 1935, that water could not lawfully be furnished under a Federal reclamation project for more than 160 acres in a single ownership "so long as the charges for the construction of the project remain unpaid".

On October 9, 1935, Mr. B. E. Stoutemyer, District Counsel of the Bureau of Reclamation at Portland, Oregon, answered an inquiry from the attorney for the Federal Land Bank of Spokane about the delivery of water to lands in the Minidoka Project. Mr. Stoutemyer's letter quoted Section 5 of the 1902 Act, Section 3 of the 1912 Act, and Sections 12 and 13 of the 1914 Act. Also he referred to Section 46 of the Omnibus Adjustment Act of 1926, but noted that the Act had not been in effect in 1916 when the Minidoka contract was executed. Mr. Stoutemyer's letter closed with the following two paragraphs:

> "It is clear that the law in effect at the time of the execution of the Minidoka Irrigation District contract did limit the ownership of irrigable acres of the project where any part thereof is covered by a water right application which is not paid in full. There is no restriction as to ownership of land upon which water rights are paid in full, provided all of it in one ownership is in that class.
>
> "As to the lands irrigated under the Minidoka Irrigation District, there have been about 300 landowners pay up on their water rights and a great majority of the others have only two more construction payments to make. Under the rules mentioned above, the mortgagee could, if necessary, get rid of the acreage restriction by making additional payments or requiring the owner to do so and acquire a fully-paid water right."

1938

In response to an inquiry from Senator Hayden, Mr. Oscar L. Chapman, Assistant Secretary of the Department of the Interior, wrote to Senator Hayden on January 7, 1938, with respect to certain questions regarding the Salt River Project in Arizona. He said, among other things, "the proviso to Section 3 of the Act of 1912 prohibits the holding of land in excess of one farm unit, unless the construction charges are paid in full on the excess area".

1939

In connection with the Payette Division of the Boise Project, the Commissioner of Reclamation, Honorable John C. Page, recommended to the Secretary of the Interior on October 26, 1939, that a notice be issued to the landowners, calling attention to the excess land provisions of the reclamation laws and the contract of October 3, 1927 betweem the United States and the Black Canyon Irrigation District. The Commissioner stated that a similar notice had been used on the Roza Division of the Yakima Project. The proposed form of notice explained the form of contract for the sale of excess lands pursuant to the requirements of Section 46 of the Omnibus Adjustment Act of 1926 and pursuant to the District contract. The form of notice then said:

> "It is deemed appropriate at this time to point out that the reclamation laws forbid the furnishing of water to any one person for more than 160 acres of irrigable land on which the construction charges, both accrued and unaccrued, have not been fully paid, unless the excess land has been subscribed to approved excess land contracts providing for the sale of the excess acreage at the appraised price as provided for in the statute and contract referred to above.
>
> "In order to carry out the provisions of the reclamation laws, each landowner desiring water from the Payette Division of the Boise project will be called upon at some time prior to the delivery of water during the irrigation season of 1940, and following seasons, on said division, to make a showing by affidavit, as to the total irrigable acreage owned by him in any and all federal reclamation projects. Water deliveries to the individual landowner will not begin each season on the Payette Division until

> a satisfactory showing has been made that he does not own more than a total of 160 acres of irrigable lands for which construction payments have not been completed on any and all reclamation projects and divisions thereof on which he may own land, or that his excess land (if any) has been duly subscribed to an approved excess land contract in full compliance with the requirements of the statute and the contract to which references have been made." (Emphasis Supplied)

Attention is directed to the fact that this notice clearly gives the excess landowner the alternative of either executing a recordable contract under Section 46 of the 1926 Act or paying all construction charges "both accrued and unaccrued" on his excess lands.

The proposed form of notice was approved on November 8, 1939, by the Honorable John W. Finch, Acting Undersecretary of the Department of the Interior.

1941

Pursuant to authorization from the Commissioner of Reclamation to the District counsel in Billings, Montana, a comprehensive study of excess land problems under the Reclamation Laws was completed on May 24, 1941, by Mr. V. P. King, Associate Attorney. The title of the volume, which contains nearly 300 pages, is "The Excess Land Provisions of the Federal Reclamation Laws". It is a comprehensive survey of the laws themselves, their interpretation and application, and their deficiencies, and it contains recommendations for various amendments of the Reclamation Laws.

With respect to the effect of the payment of construction charges, Mr. King's survey repeatedly states that upon completion of payment of all construction charges the acreage limitations cease to be applicable. This conclusion is stated, for example, on page 89, in the following words:

> "Thus, after all charges have been paid, the Reclamation Laws impose no limitation whatever upon the amount of land which may be held in single ownership."

Also, at page 166, Mr. King said, in his summary of existing law:

> "After payment in full of building and betterment charges have been made on behalf of any tract of land, the excess land restrictions have no application whatsoever."

The principal defect found by Mr. King in the then existing acreage limitation laws related to the treatment of excess lands on which full payment of construction charges had not been made, and Mr. King's recommendations for changes in the law contained a number of proposals for dealing with this type of situation. However, his recommendations did not include any proposal for change in the basic principle that acreage limitations cease to be applicable when construction charges are paid in full.

1946

A survey of landholdings on Federal Reclamation Projects was completed in 1946, and a report thereon was delivered to the Secretary of the Interior on July 22 of that year. It was entitled "Land Ownership Survey on Federal Reclamation Projects", and it has been made available for general reference. In the introduction on page 4 appears the following explanation of the purpose of the survey and the treatment given to lands on which construction charges have been fully paid:

> "The purpose of the survey has been, therefore, to secure an approximate measure of the number of ownerships in excess of 160 irrigable acres per individual owner to be found on each Bureau project and a measure of the number of acres which appear to be held in violation of the acreage limitation of the Reclamation law, after deducting * * * lands on which construction charges have been paid in full. Lands in this last-mentioned category are, under the law, no longer subject to the acreage limitations. * * *"
> (Emphasis Supplied)

A further comment on this same subject appears on page 6, in which it is stated, among other things, that "land on which construction charges have been paid in full * * * has been defined and classified as land not in apparent violation of the acreage limitations".

The information contained in the report, particularly on pages 16 and 17, show that in seven different reclamation projects in five different Regions of the Bureau of Reclamation, there were very extensive holdings of excess lands - a total of 78,380 acres with 286 owners - on which all construction charges had been paid. In the Klamath Project, it appeared that three owners held an average of over 1800 acres each on which construction charges were paid. These holdings were not classified as holdings in violation of the Reclamation Laws.

1947

Following the receipt of the survey of excess landholdings, the Associate Solicitor of the Department, Mr. Felix H. Cohen, reviewed in detail the history and status of the Departmental policy with respect to lands upon which construction charges had been paid. In his memorandum opinion (No. M-35004) addressed to the Commissioner on October 22, 1947, Mr. Cohen referred to the King opinion of 1914 and all of the relevant statutes, and he held that "the several excess land provisions are to be read together and treated as component parts of a comprehensive legislative plan of limitations applicable to lands receiving water from Federal Reclamation Projects". He addressed himself specifically to the question whether the final payment of construction charges, as contemplated by Section 3 of the 1912 Act, could be held to apply to payment in full of the joint obligation of an irrigation district under a contract entered into pursuant to Section 46 of the 1926 Act. His conclusions are as follows:

> "Section 46 of the 1926 act, _supra_, sets out the substance of the provisions required to be incorporated in joint-liability repayment contracts with irrigation districts. That section does not purport to contain all the excess-land provisions applicable to lands affected by such contracts. For instance, it contains no provisions relative to cases where excess holdings develop sugsequent to the execution of the joint-liability contract, either by

descent, will, or foreclosure of a lien, or by other methods of acquisition. The proviso to Section 3 of the Act of August 9, 1912, does, however, contain provisions applicable to such cases. Consistently with the above-mentioned Solicitor's opinions, Section 46 may be construed as constituting merely one element of a comprehensive land-limitation plan. Since joint-liability repayment contracts were not in general use when the Act of August 9, 1912 was adopted, the language used in those acts was not specifically directed at situations arising under contracts of that type. Congress apparently intended that the land-limitation provisions, in effect when the Act of May 15, 1922 (42 Stat, 541), the Act of May 25, 1926, and other acts covering the use of irrigation district contracts were adopted, would be applicable thereto, as nearly as practicable. Otherwise, substantially different acreage restrictions might result from the discontinuance of water-right applications and the adoption of the joint-liability repayment contract procedure.

"When all construction costs due under a joint-liability repayment contract have been paid in full, there is no apparent reason why the lands receiving water under such contract should not be deemed relieved of the excess-land restrictions in the same manner as paid-up water right application lands. The fact that Congress did not, in connection with the various acts authorizing or requiring joint-liability repayment contracts, enact complete excess-land provisions couched in language adapted to joint-liability contracts does not in itself deny a Congressional intention that the principles of its excess-land policy, as previously expressed with reference to water-right applications, should apply to such contracts. The enactment of new excess-land provisions, relative to the phases not specifically covered by the said acts, was undoubtedly deemed unnecessary because these acts became a part of the reclamation laws for all purposes and would be interpreted on that basis. The existing excess-land provisions would, therefore, become applicable.

"In the light of the foregoing, it is my view that upon full payment of construction obligation under a joint-liability repayment contract, the lands receiving water under such contract are, under the provisions contained in Section 3 of the Act of August 9, 1912, relieved of the statutory excess-land restrictions. It should be noted here that, where the alternative type of contract authorized by section 9(e) of the Act of August 4, 1939 (53 Stat. 1187), is employed, namely, a contract 'to furnish water' for a period of years in lieu of a contract for the repayment of a construction obligation, there is no construction-charge obligation to be paid and, therefore, no release of excess lands from the limitation is operative.

"As to part (c) of your question, there is no indication that Congress intended to distinguish between Warren Act lands and project lands to the extent that lands on which a Warren Act contractor has paid all construction charges would remain subject to the excess-land provisions, while project lands on which construction charges have been paid in full would be relieved from such restrictions; neither is there any apparent basis for a distinction of this nature. In the instructions, approved by the Department on July 22, 1914, discussed above, it is stated that if the proviso to Section 3 of the Act of August 9, 1912, were interpreted as a 'provision which limits to 160 acres the area for which a man may hold an appurtenant water right even after he has disclosed all his obligations to the Government, except for operation and maintenance,' the resulting limitation would be a 'radical departure from all the public land laws, as apparently there never has been any intent by Congress to limit the amount of land which a man may own after having complied in full with the provisions of the law in order to acquire the title, and as the water right becomes on final payment an appurtenance to the land the same rule governs.' Consistently therewith, where a water right is acquired by full payment of the construction charges due under a Warren Act contract, the lands to which the right is appurtenant are to be deemed relieved from the excess-land provisions. In a Warren Act contract wherein the contractor is called upon to pay only an annual carriage charge, however, there would not be operative the condition which would remove the limitation."

Some two months after the receipt of the Cohen opinion, the Commissioner of Reclamation, Honorable Michael W. Straus, circulated copies of the opinion to all regional and branch directors of the Bureau of Reclamation with Administrative Letter No. 303 dated December 16, 1947. The administrative letter comments on the subject of the opinion in the following paragraph:

> "There have been numerous inquiries as to whether acreage limitations of the Reclamation laws are applicable to lands for which all construction charges have been paid. The Office of the Solicitor was requested to give an opinion. Opinion M-35004, which covers this question, has been received and a copy is attached to this administrative letter. The opinion holds that payment of all construction charges against excess lands frees such lands of acreage limitation restrictions. In the case of a joint liability contract where the identity of construction charges against specific lands is lacking, payment in full of the joint obligation assumed by the district would be essential to effect this result. The principle will not be applicable in the case of water service contracts executed under the authority of Section 9(e) of the Reclamation Project Act of 1939 inasmuch as there is no construction obligation which can be met, nor does it apply in the case of Warren Act contracts calling only for the payment of annual carriage charges, for the same reasons." (Emphasis Supplied)

1948

A supplement designated as Supplement No. 1 to Administrative Letter 303 was issued September 4, 1948 to all regional and branch directors. Accompanying the supplement was a memorandum from the Chief Counsel of the Bureau of Reclamation, Mr. Clifford E. Fix, to the Commissioner of Reclamation dated September 3, 1948, commenting upon the Cohen opinion mentioned above. Mr. Fix discussed a number of questions of procedure involved in applying the principles established by Administrative Letter No. 303, among which was the question of the determination of the contingent liability of an individual landowner under a contract made by his irrigation district under Section 46 of the 1926 Act, generally called a joint liability contract. He referred to the provision in Section 46 giving a certain relaxation to the acreage limitation provisions upon payment of one-half of the construction charges, and he concluded that Congress must have intended that the total construction charges against each parcel of land should be determined in advance as a definite sum of money. Accordingly, he concluded that the contingent liability which might attach to certain lands on account of default in payment by other lands should not be treated as "part of the construction charges"; otherwise, there would never be a time short of full payment of the district obligation when it could be said that the construction charges against any particular parcel had been paid. In discussing this subject, Mr. Fix made the following significant comment:

> "There is no expressed or implied indication that a landowner under a Federal reclamation project subsequent to the adoption of the permissive or required contractual relation between the United States and an irrigation district should find himself in a less favorable position with respect to relieving his lands of limitation by payment of construction charges than should a landowner operating under a water right application."

1949

Congress approved two repayment contracts with water districts in the Yakima Project in Washington and one in the Vale, Oregon Project, containing a specific "pay-out" provision; i.e., a provision stating that the acreage limitation shall cease as to land for which the allocable portion of the repayment obligation is paid in full.

1950

Reference has already been made to the letter from the Honorable Oscar L. Chapman, Secretary of the Interior, to Congressman William M. Whittington, Chairman of the Committee of Public Works of the House of Representatives, dated November 2, 1950. (See pages 12 and 13 hereof)

During 1950, there occurred a specific Congressional recognition that the prepayment of the irrigationists' allocated portion of the construction cost of a

Reclamation project would ipso facto terminate the acreage limitation provisions of Reclamation Law. This occurred in the Flood Control Act of 1950 (64 Stat. 163), in the authorization of the Russian River Flood Control Project in California.

In the Conference Committee Report on the Bill which became the Flood Control Act of 1950, there was the following statement by the Conferees regarding the Russian River Project:

> "The Conferees note, as developed during the hearings on this project before the Senate Committee on Public Works that local interests are prepared to pay in full their share of the costs of the project allocable to water conservation storage and that the Interior Department has agreed that as soon as this payment is made the funds would be transferred from the Interior Department to the Corps of Engineers which is charged with the construction work, and that the interests of the Interior Department in the administration of the project would then be turned over to local interests for their own operations and administration."
> (Conference Committee Report No. 1968, 81st Congress, 2d Session on H.R. 5472 at page 22)

The following is the entire text of the portion of the 1950 Flood Control Act relating to the Russian River Project:

> "RUSSIAN RIVER BASIN
>
> "The plan for flood control, water conservation, and related purposes, in the Russian River Basin, California, is hereby approved substantially in accordance with the recommendations of the Board of Engineers for Rivers and Harbors dated April 22, 1949, and as recommended by the Chief of Engineers in his report dated November 15, 1949, and there is authorized to be appropriated the sum of $11,522,000 for accomplishment of the initial stage of the plan: Provided, That section 8 of the Flood Control Act of 1944 shall apply to this project: Provided further, That prior to starting construction, local interests shall

> contribute the sum of $5,598,000 in cash in full repayment of the conservation benefits: And provided further, That such contribution of $5,598,000 shall be transferred to the Secretary of the Army for application to the cost of construction of the project." (64 Stat. 177)

By making Section 8 of the 1944 Flood Control Act applicable to the project, the Congress expressly made the project subject to Reclamation Law. By requiring the $5,598,000 to be paid in cash prior to starting construction, the Congress specifically applied the pay-out principle, as contemplated in the Conference Report quoted above, so that the landowners would be free of the acreage limitation provisions of Reclamation Law.

But the most significant aspect of this Congressional enactment is that the Congress did not go on to say in specific terms that the payment of the $5,598,000 would terminate acreage limitations as to the Russian River Project. The reason the Congress did not go on to express the exemption specifically is that Congress knew that under the law as it existed at that time, the prepayment of construction charges would ipso facto terminate the acreage limitation provisions. Thus Congress recognized the validity of the pay-out principle and specifically applied it in this case.

The $5,598,000 was paid in cash in 1956. The project was completed many years ago. No effort has ever been made by the Bureau of Reclamation to enforce the acreage limitation provisions in the project area, although there are substantial "excess" landownerships within the project.

1951

In response to an inquiry from Congressman Shelley of California and seven other members of Congress, Secretary Chapman, on March 29, 1951, wrote Congressman Shelley about the application of the Administrative Letter 303 in correcting the situations revealed by the 1946 survey where excess lands were held in violation of reclamation laws. Among other things, Secretary Chapman said:

> "It is gratifying to report to you that through that action landowners on the older projects have rapidly brought them-

> selves into compliance with the acreage limitation provisions. Outstandingly, the Yuma Project, Arizona, the Salt River Project, Arizona, and the Klamath Drainage District in Oregon have eliminated non-compliance through either the execution of recordable contracts, disposal of excess lands to qualified owners, or through the payment in full of the construction obligation in strict accord with the Reclamation laws as determined by the Associate Solicitor in Opinion (M 34999)." (Emphasis supplied)

During 1951 Congress approved contracts containing "pay-out" provisions with one district in the Frenchtown, Montana Project and with nine districts in the Owyhee Project in Idaho and Oregon.

1952

On June 25, 1952, Secretary Chapman approved a form of contract between the United States and various water users organizations in the Palisades Project on the Snake River in Idaho. The form of contract which was approved by the Secretary contains the following provisions:

> "Pursuant to the provisions of the Federal Reclamation Laws, water made available to the District from space in the reservoir system for which the District is obligated to the United States for construction charges under the terms of this contract shall not be delivered to more than one hundred sixty (160) irrigable acres in the ownership of any one person or other entity nor more than three hundred twenty (320) irrigable acres held by a husband and wife as community property * * *. These limitations shall cease to operate when the construction charge obligation under this contract has been paid in full. It shall cease also as to any excess lands in any one ownership when the construction charge obligation hereunder allocable to such land has been paid in full to the United States." (Emphasis supplied)

Pursuant to that authorization some thirty-six contracts were made with irrigation districts and canal or irrigating companies in the Palisades Project, all containing the provisions quoted above. The contracts were executed during the month of December, 1952.

During 1952 also contracts containing the same provision quoted above were executed with irrigation districts in Nebraska and Wyoming.

At various times before and after 1952 various contracts with irrigation districts have been executed with the following provision:

> "The limitations stated in this subarticle [the acreage limitations] shall cease to operate when the construction charge provided in this contract has been paid in full. It shall cease, also, as to the land in any one ownership when the construction charge obligation hereunder allocable to such land has been paid in full to the United States."

Between 1949 and 1955 contracts containing this provision have been executed with twenty-seven irrigation districts in twelve different reclamation projects in five different states.

During 1952 Congress approved three contracts containing pay-out provisions with irrigation districts in the North Platte Project in Nebraska and Wyoming.

1953

On July 22, 1953, Congress approved a pay-out contract with one district in the Yakima, Washington Project.

On May 15, 1953, the United States through the Regional Director of the Bureau of Reclamation at Klamath Falls, Oregon, entered into "a recordable contract" identified as Contract No. 14-06-200-826 with D. E. Colwell and others covering their lands in the Klamath Project. The contracting parties were excess landowners in the project and by the contract they agreed to sell their excess lands before January 1, 1956, at prices not exceeding a value to be determined by agreement with the Regional Director or by an appraisal board. The contract also authorized the Secretary of the Interior to sell their excess land after January 1, 1956, if they should fail to do so. Paragraph 1(b) of the contract contains the following provision:

> "It is further agreed and understood that upon payment in full of the construction charge obligation assigned to land which is or may be subject to any unpaid construction charge obligation under the Federal reclamation laws, such land shall be eligible to receive water unrestricted by reason of any excess land limitation in the Federal reclamation laws, and shall be freed from the obligations imposed by this contract."

Several months later (on January 22, 1954) the United States, through the Regional Director at Sacramento, Mr. C. H. Spencer, executed a document entitled "Release", referring to the "recordable contract" of May 15, 1953 with the Colwells mentioned above. The agreement refers to the passage quoted above from that contract and recites that the construction charge assigned to the land described in the contract had been paid in full. The document then says,

> "NOW, THEREFORE, the land described in said contract of May 15, 1953, is hereby freed from the obligations imposed by said contract."

This executive action is a specific application of the longstanding administrative interpretation of the provisions of Reclamation Law. It is particularly significant as an example of the official release of landowners from their "recordable contract" under Section 46 of the 1926 Act upon their prepayment of all construction charges.

On November 9, 1953, the new Commissioner of Reclamation, Honorable W. A. Dexheimer, requested the new Secretary of the Interior, Honorable Douglas McKay, to crystallize the Department's position as to the Kings River negotiations. Specifically, he requested approval of the following recommendations:

> "To firm up the Kings River repayment contract negotiation matter, I recommend that the Department of the Interior continue to endorse the principle that reimbursement for irrigation benefits resulting from multiple-purpose dams and reservoirs constructed by the Department of the Army should

> be by contractual arrangements negotiated pursuant to Reclamation law by the Bureau of Reclamation and executed on behalf of the United States by the Secretary of the Interior. I further recommend that you instruct the Bureau of Reclamation to continue its efforts to reach agreement on appropriate repayment contract arrangements with the Kings River water users on the basis that (1) the repayment contract for $14,250,000 shall be for irrigation service only; (2) the repayment contract will provide for repayment of the irrigation allocation in 40 years without interest, with the option on the part of the water users organizations to make a lump sum payment in advance and that the excess land laws become inoperative upon payment in full of the $14,250,000; and (3) that the Fresno Slough rights be for separate consideration additional to the irrigation allocation of Pine Flat Dam."

These recommendations were approved by the Assistant Secretary, the Honorable Fred. G. Aandahl.

1954

Secretary McKay was asked by Congressman (later Senator) Engle of California for a statement of the policy of the Department with respect to the Kings River contracts and particularly the matter of the effect of a lump sum payment. On March 2, 1954, Secretary McKay wrote Congressman Engle that the Department had decided to authorize negotiations on the basis approved by Mr. Aandahl on November 9, 1953, including the option on the part of the local interests to make a lump sum payment in advance and thus be relieved of the acreage limitations. Similar letters were written on the same date by Secretary McKay in answer to inquiries from the Reverend Donald McDonnell of San Jose, California, Mr. George Sehlmeyer, Master of the California State Grange at Sacramento, California, and Mr. C. J. Hagerty, Secretary-Treasurer of the California State Federation of Labor in San Francisco, California.

On May 19, 1954, the Honorable Fred G. Aandahl, the Assistant Secretary of the Interior, wrote to Mr. William F. Docker, Counsel for the Kings River Conservation District, in answer to certain inquiries about the pending negotiations and among other things Mr. Aandahl reaffirmed the position of the Department that the excess land laws would become inoperative upon the payment in full of the $14,250,000 obligation of the local interests.

On December 11, 1954, Secretary McKay answered an inquiry of Senator Murray upon the same subject and to the same effect.

On July 2, 1954, Mr. C. H. Spencer, the Regional Director at Sacramento, wrote to Mr. J. H. Sackett, the Manager of the Travelers Insurance Company at Portland, Oregon, in reply to certain questions about a repayment contract being negotiated by the Tule Lake Irrigation District in the Klamath Project. With respect to that contract Mr. Spencer said, "It is anticipated that the amounts to be repaid will be allocated on a per-acre basis. Therefore, payment in full of the charges against any specific tract of land would remove that tract from the applicability of the excess land provisions".

During 1954 Congress approved five contracts containing pay-out provisions with four districts in three projects in Idaho and Oregon.

In a letter to the attorney for the Kings River Water Association, dated May 5, 1954, the Assistant Secretary of the Interior said: "* * * it is considered permissible for individuals or organizations in a part of the Kings River service area to make lump sum payments of their proportionate shares of the total cost and thus be relieved of the limitations of the excess land laws."

In the summer of 1954, Congressman Engle introduced a Bill to amend the acreage limitation provisions of Reclamation Law by providing that an excess landowner could relieve himself of the acreage limitation not only by paying his share of the construction cost in cash at the outset, but also by paying his share of the construction cost in installments with interest. In a public statement issued July 12, 1954, Congressman Engle announced the introduction of his Bill and explained its provisions. In doing so, he made the following comment:

> "The moral basis for the 160 acre limitation, or any limitation, is the fact that irrigation water under federal reclamation projects is subsidized through the use of interest-free money to build the irrigation features of those projects. Over a period of a half century--the usual pay-out period on reclamation projects--this can be equal to or a little more than the original capital investment. Under the

> present law, the capital investment is paid back but no interest is paid. This subsidy from the interest on the money which is paid by the taxpayers of the nation can be substantial--and that is the reason Congress, and especially Congressmen from outside of the western states, have insisted that there be some limitation on the amount of lands that can be thus subsidized.
>
> "My proposal is simply this: That where the lands irrigated are in excess of the acreage limitation that those lands pay the actual cost of the water which they use; in short, that the charge for the water reflect the full cost to the federal government, which is the principal plus the interest. This should be a complete answer to those who contend that large land owners can get a free ride on the general taxpayer, and on the other hand it removes all of the complications, difficulties and resentment of requiring farmers to sign contracts in which they agree to break up their holdings and sell them at a price fixed by a government official."

During his many years in Congress and later in the United States Senate, Mr. Engle was the recognized expert on all problems relating to Reclamation Law. Accordingly, his statement that "the moral basis" for the acreage limitation provisions is the financial subsidy represented by the interest-free financing of Reclamation project costs, is highly authoritative and is entitled to great weight.

The proposal for excess landowners to pay interest on their share of the project cost and thereby be relieved of the acreage limitation provisions became known as the "Engle Formula". Congressman Engle's Bill to incorporate the Engle Formula into the general Reclamation Law was not adopted. However, as noted below, the Congress did include the Engle Formula in the Small Projects Act adopted in 1956.

1955

After an interchange of correspondence commencing in the previous year the Department of the Army and the Department of the Interior arrived at an inter-departmental agreement with respect to the authority for negotiation of permanent contracts for the use of the storage space in the Pine Flat and Isabella Reservoirs. That understanding was expressed in a letter from the Honorable Clarence A. Davis, the Undersecretary of the Interior to the Honorable Robert T. Stevens, the Secretary of the Army, dated February 17, 1955, and a reply from the Honorable George H. Roderick, the Assistant Secretary of the Army, dated April 14, 1955. The agreement was that the Department of the Interior would continue to negotiate with the local interests as to Pine Flat Reservoir and the Army would conduct negotiations as to the Isabella Reservoir.

It was also agreed that both Departments would continue their negotiations on the basis of lump sum cash settlements without imposition of acreage limitations.

1956

The announcement by the Department of the Interior that the Kings River contract would embody the "pay-out" principle stirred up a public controversy. For example, Professor Paul S. Taylor published a long article in the February, 1955 issue of the Yale Law Journal bitterly criticizing the Secretary of the Interior for this action (64 Yale L.J., pages 477-514). The controversy came to the attention of several Senators and members of Congress.

As a result, Congressman William L. Dawson, Chairman of the Committee on Government Operations of the House of Representatives, on December 7, 1955, addressed a letter to Secretary of the Interior Douglas McKay requesting an explanation of the Secretary's decision and suggesting that further action on the Kings River negotiations be held in abeyance pending study of the matter by the Government Operations Committee.

On December 22, 1955, the Acting Secretary of the Interior, Clarence A. Davis, responded to Congressman Dawson's letter, stating that the Department was reviewing the laws and departmental precedents involved in this matter, promising to supply copies of the review to Congressman Dawson, and stating that action on the negotiated contract would be deferred until completion of the analysis.

On January 5, 1956, Congressman Earl Chudoff, Chairman of the Public Works and Resources Sub-Committee of the Committee on Government Operations of the House of Representatives, wrote to Secretary McKay specifically requesting that the Department's analysis include the terms and conditions of the proposed contract with the Kings River interests.

This letter was answered by Mr. Davis on January 16, 1956, in a letter which concluded with the following paragraph:

> "Action on the negotiated contract that will be submitted to the Department for approval will be deferred until this analysis is finished and until there has been reasonable time to give it necessary study."

On May 25, 1956, Under-Secretary Davis wrote to Congressman Chudoff transmitting 30 copies of a two-volume Report entitled "Excess Land Provisions of the Federal Reclamation Laws and the Payment of Charges". Each volume is over an inch thick.

The first volume (PART ONE) contains a 56-page Summary of the Acts of Congress and actions of the Department of the Interior relating exclusively to the "pay-out" principle, followed by a chronologically-arranged collection of copies of Department rulings, correspondence, memoranda, etc.

The first paragraph of the Summary reads as follows:

> "This summary is designed to present the principal provisions of the acts of Congress referred to as the 'Reclamation Laws' in so far as they deal with or bear upon the effect which final payment of capital charges has upon the excess land limitations of those laws with respect to the lands as to which such charges are paid, and to outline the decisions, actions, and statements coming officially from the Department of the Interior relating thereto. The summary is limited to this phase of the excess land provisions, and does not attempt to cover the application of such provisions in any manner not directly related to the question under inquiry. Some of the general legislation and some special enactments dealing otherwise with the general subject matter are therefore not cited."

The concluding paragraph of the Summary appearing on page 56, reads as follows:

> "The proposal contained in the repayment contract arrangements negotiated with the Kings River Conservation District is simply that when and to the extent construction charges repayable under that contract are paid to the United States, the lands with respect to which full payment is made will no longer be subject to the excess-land limitations of the Federal reclamation laws. Development of this phase of the proposed contract constitutes the application of a principle which is consistent with a policy of long standing and which is compatible with the construction of Acts of Congress as they have been interpreted by administrative officials and legal staffs of the Department over a long period of years." (Emphasis supplied)

This paragraph clearly and explicitly states to the Congress that the "pay-out" principle will be included in the Kings River contract, applying a policy of long standing.

The second volume (PART TWO) constitutes a record of the negotiations, up to the date of the Report, between the United States and the Kings River water users with respect to a contract for the use of storage space in the Kings River Flood Control Reservoir (the Pine Flat Dam and Reservoir) for the storage of privately-owned irrigation water. The volume consists of a 17-page summary of the negotiations, followed by 55 exhibits which are copies of correspondence, memoranda, and other documents relating to the negotiations. Throughout this record, there are many assurances by officials of the Department of the Interior to the effect that "pay-out" (i.e., payment in full of the allocated share of the construction costs) would eliminate application of the acreage limitation provisions of Reclamation Law.

A copy of the then pending draft (dated October 27, 1955) of the proposed contract between the United States and the Kings River interests appears as Exhibit 52 in this volume. It includes the "pay-out" principle. The draft contains provisions specifically permitting prepayment in full "by any member unit, landowner, or stockholder" (pages 7 and 8), a provision on page 15 that the acreage limitations "shall not apply" to lands for which payment in full has been made, and an express statement on page 17 that such payment terminates the applicable "recordable contract" under which the landowner had agreed to dispose of his excess lands.

The Departmental Report was widely distributed. Thirty copies were sent to Congressman Chudoff with Mr. Davis' letter of transmittal in May of 1956, and copies were distributed to other parties in large numbers.

Congress never took any action to revoke, modify or even criticize the Departmental policy reflected in the Report to Congressman Chudoff. Since the Report was made in answer to direct inquiries from the Chairman of a Committee and the Chairman of a Subcommittee of the House of Representatives, the conclusion is inescapable that the Report completely satisfied the inquiring Congressmen. By failing to take any action after the receipt of the Report Congress impliedly approved of the interpretation of the laws and the policy described in detail in the report.

Another event of major importance in the present connection occurred in 1956 - the enactment of the Small Projects Act (Public Law 984, 84th Congress, Second Session, H.R. 5881, approved August 6, 1956). The enactment of this measure occurred some three months after the receipt of the above-mentioned Report of the Department of the Interior as to the Departmental policy that payment in full of the construction charges allocable to any land relieves the land from the effect of the excess land provisions.

A salient feature of the Small Projects Act is the provision with regard to excess landholdings. This is Section 5(c), which states that an excess landowner in a project constructed under the statute shall be required to pay interest upon the prorata share of the Government loan which is attributable to furnishing irrigation benefits to his landholdings in excess of 160 irrigable acres. This provision recognizes and approves the principle so well expressed by Secretary Chapman in his 1950 letter to Congressman Whittington that acreage limitations are the consideration received by the Federal Government for supplying interest-free money to landowners under Reclamation Law. Congress had already provided for optional prepayment of construction charges so that an excess landowner could escape the effect of the acreage limitations by foregoing the interest-free installment plan and paying his obligation in cash. The enactment of this provision in the Small Projects Act carried that policy one logical step further and gave the excess landowner an additional alternative whereby he could forego the interest-free financing by paying interest on his share of the Government loan.

Payment of interest on the deferred installments is the economic equivalent of prepayment of the entire obligation - in neither case does the payor receive any subsidy in the form of interest-free financing.

The purpose and effect of this provision were thoroughly discussed during the hearings of the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs of the House of Representatives of the 84th Congress on February 9, 10 and 11, 1955. The transcript of the hearings include an extended discussion of this subject by Congressman Engle of California, then the Chairman of the House Committee on Interior and Insular Affairs, commencing at page 59. Mr. Engle was the sponsor of the concept that the payment of interest would be the economic equivalent of the prepayment of the obligation in cash. He said at page 62 of the transcript of the hearings that "* * * the moral basis for the 160-acre limitation or any limitation is the fact that there is a federal subsidy given to those lands", and he described the subsidy in terms of the interest-free financing which is available under the standard 40-year repayment program without interest.

Having already in mind the thoroughly established principle that payment of the entire obligation in advance releases the land from the acreage limitations, the Congress readily approved the logical corollary of that principle by giving similar relief from acreage limitations to those excess landowners who forego the interest-free financing by paying interest. The Small Projects Act was adopted by the Congress.

In approving the Act after Congress adjourned, President Eisenhower noted an objection to the bill unrelated to our present inquiry. His objection was that Section 4(c) of the Act undertook to give committees of Congress a reviewing power over the actions of the Executive Departments in carrying out certain functions authorized by the statute. President Eisenhower expressed the opinion that this provision was of doubtful constitutionality because it violated the principle of the separation of powers within the Government. Accordingly, he requested that the provision be removed by way of amendment in the next session of Congress. This was done, as will be noted below, in 1957.

By still another action taken in 1956 the Congress also expressed its approval of the principle that acreage limitations should not apply to lands which do not receive the benefit of interest-free government financing. The so-called "Engle Formula" (so named because it was first suggested by Congressman Engle), whereby the excess landowner pays interest on his share of the government obligation instead of selling his excess lands, was incorporated by the Congress in the Act authorizing the Washoe Project in Nevada, approved August 1, 1956 [Public Law 858, 84th Congress, Second Session (S. 497), 70 Stat. 775, Sec. 2(b)]. In the Conference Report on the measure it was said that this provision "would remove the subsidy from serving excess lands" [House Report. No. 2834, 84th Congress, Second Session].

Thus there were three very important events in 1956 bearing upon the question whether the pay-out principle was a valid interpretation of the acreage limitation statutes: (1) An exhaustive report of the basis, history and application of the pay-out principle was made to Congress and impliedly approved by Congress; (2) By passage of the Small Projects Act Congress affirmatively approved and put into a statute of general application the Engle Formula which is based upon the underlying principle of the administrative interpretation that acreage limitations do not apply when there is no interest-free loan; and (3) Congress applied the same Engle Formula in a specific authorization Act for the Washoe Project.

During 1956 Congress also approved one more contract containing a pay-out provision, this one being in the Klamath Project in California and Oregon.

1957

A bill to amend the Small Projects Act in conformity with the President's wishes was introduced early in the First Session of the 85th Congress. It was passed and approved June 5, 1957. While the bill was going through the legislative process, Senator Douglas and Senator Morse proposed amendments which, if adopted, would have repealed the interest-payment provision of the 1956 Act by requiring that landowners comply with the standard acreage limitation provisions of reclamation law, regardless of whether they paid interest upon their share of the obligation. This amendment was defeated after extensive debate on the floor of the Senate. (Congressional Record, May 23, 1957, pages 6732-6743.) Thus Congress reaffirmed its policy that a landowner who receives no interest-free financing under Reclamation Laws is not subject to the acreage limitations.

During the 1957 Session, Senators Douglas, Morse and Neuberger also introduced a separate bill (S. 1425) to repeal the interest-payment provisions of the Small Projects Act. In the report of the Senate Committee on the 1957 Amendment of the Small Projects Act (Senate Report No. 293, 85th Congress, First Session) reference is made to the separate bill, S. 1425, and it was stated that that bill would be considered separately "at the convenience of the sponsors and the Committee". After they failed in the Senate debate on May 23rd to repeal the interest-payment provisions by way of amendment of the 1957 Bill the sponsors of S. 1425 apparently concluded not to press their separate bill. At any rate, S. 1425 never came out of the Senate committee to which it was referred and, needless to say, it was not enacted.

On July 10, 1957, the then Solicitor of the Department of the Interior (later Under Secretary), the Honorable Elmer Bennett, rendered an Opinion to the Secretary of the Interior on the question whether an individual landowner as distinguished from an entire irrigation district could obtain relief from the excess land provisions by prepayment of his proportionate share of the District obligation. (64 I.D. 273) This Opinion related specifically to the then pending contract with the water users' organizations on Kings River. Mr. Bennett's Opinion was that an individual landowner could not be relieved from the excess land provisions in this manner. His Opinion was based upon his construction of Section 46 of the 1926 Act. He said, however, that:

> "It is the payment of the full obligation by the district under the 1926 joint-liability repayment contract, as well as the similar payment under the 1912 Act individual contract, that relieves the excess lands from the statutory restrictions." (64 I.D. 276)

Pursuant to that Opinion, the Secretary of the Interior, the Honorable Fred A. Seaton, wrote to Mr. Philip A. Gordon, the President of Kings River Conservation District, on July 12, 1957, stating that the pending form of repayment contract could not be approved because of its provisions permitting individual landowners to escape acreage limitation by paying their share of the government obligation. In his letter, Secretary Seaton said, however,

> "The Department continues to recognize and support the basic concept of Reclamation Law that full and final

> payment of the obligation of a district to the Federal government ends the applicability of the acreage limitations."

Pursuant to that ruling of the Secretary the Kings River District then proceeded to negotiate contracts which provide, not for individual prepayment, but instead for prepayment of the entire obligation of the contracting district, in order to escape the acreage limitations for lands within that district.

1959

On February 2, 1959, the Undersecretary of the Department of the Interior, the Honorable Elmer F. Bennett, stated to representatives of the Kern River interests at a conference in Mr. Bennett's office in Washington that

> "* * * a full payment of the capital obligation in cash upon execution of the agreement will eliminate acreage limitation provisions from the contract."

On May 29, 1959, the Regional Counsel for the Bureau of Reclamation, Mr. Silverthorne, made the same statement to several representatives of the Kern River interests at a conference in the office of the Regional Director of the Bureau of Reclamation in Sacramento.

A very significant and impressive Congressional expression in regard to the pay-out principle occurred in connection with the legislative review of H.R. 7155, the bill to authorize the construction of the San Luis unit of the Central Valley Project in California in cooperation with the State of California. In the report of the Committee on Interior and Insular Affairs of the House of Representatives, 86th Congress, First Session, House Report No. 399, the enactment of H.R. 7155 was recommended. In commenting upon a provision of the bill (Section 7) which would exempt the areas served by the State of California from the Federal Reclamation Laws, the majority of the Committee observed that the State would pay its entire share of the cost of constructing the joint facilities prior to the utilization of the facilities by the State, and the Committee pointed out that under those circumstances the State would not be bound by the acreage limitation provisions "under existing law", even if the State were a customer of the United

States (page 12). The Committee Report then contains a brief review of the principle of the law that acreage limitations cease when construction charges are paid in full. The Committee referred to Section 3 of the 1912 Act, to the comments in the land ownership survey of 1946, to Associate Solicitor Cohen's Opinion of 1947, to the above-mentioned two-volume Report of the Department to the Committee of the House in 1956, to the execution of numerous contracts in many different projects containing appropriate provisions for the relief of acreage limitation upon payment of construction charges, and to Secretary Seaton's letter of July 12, 1957, to the Kings River Conservation District regarding the Kings River Project. The Committee followed this review with this paragraph (page 14):

> "It is true that the provisions of the 1912 act and their relation to district obligations under the 1926 act have not been construed in any reported judicial decision, but the administrative history is such that the committee has little doubt that the payout rule could and would be properly applied in the present instance even if the State were to be thought of not as a partner but as a customer of the Federal Government. Whatever may be the merits or demerits of continuing to apply the prevailing construction of the 1912 and 1926 acts to irrigation districts in situations in which, although final payment is made only after a period of years during which they have received the benefits of interest-free Federal money and, in many cases, assistance from power revenues, it remains true that (1) the administrative practice of doing so is now so well fortified by history that it can probably be successfully attacked by no one except Congress and (2) that there is no legislation now pending before Congress, nor has any ever been introduced, which would overrule the departmental interpretation of these acts or provide other standards to guide it. The committee cannot, in this circumstance, apply to the special case of the State of California a rule which is not applicable to others."

The Committee also said (page 15):

> "The worst that can be said about section 7, then, is that it is surplusage. Its deletion from the bill would have no substantive effect on the law applicable to the San Luis undertaking. Only an amendment affirmatively requiring adherence to the Federal acreage limitations notwithstanding the State's full payment of its share of the construction cost of the project would accomplish that which those who seek to delete section 7 mistakenly believe would be the effect of doing so."

These expressions appear in a report of a majority of the 31 members of the House Committee on Interior and Insular Affairs. One of the members of the Committee was the Honorable Stewart L. Udall, then a member of Congress from Arizona and later the Secretary of the Interior. Six of the 31 members of the Committee filed a minority report objecting to Section 7. Secretary Udall was not one of the members who found Section 7 objectionable.

1960

During this year, the negotiated contracts for the use of the storage space in the Isabella Reservoir on Kern River and Pine Flat Reservoir on Kings River were approved by the local interests, by the Regional Office of the Bureau of Reclamation in Sacramento, by the Commissioner of Reclamation in Washington, and by the Undersecretary of the Interior. Each of the contracts incorporated the payout principle. The contract regarding the Isabella Project specifically required the local interests to pay their allocated share ($4,573,000) of the construction cost within 180 days of the date of the execution of the contract. In the Pine Flat Project, which includes some 31 separate irrigation districts and canal companies, each contracting entity was given the option of paying its share of the construction cost in a lump sum so as to avoid the acreage limitation provisions, or accepting the 40-year interest-free instalment payment plan and being subject to the acreage limitation provisions.

The contracts were submitted to the Secretary of the Interior, the Honorable Fred A. Seaton, for his final approval on November 4, 1960.

1961

The contracts were approved by the Secretary of the Interior on January 19, 1961 (the last day of the Eisenhower Administration), but the Secretary withheld authority for execution of the contracts on behalf of the United States pending receipt of an opinion of the Attorney General of the United States on the validity of the pay-out principle.

Following the change of administration, the legal question which had been referred to the Attorney General was returned to the Department of the Interior without comment and was then referred by the new Secretary, the Honorable Stewart L. Udall, to the new Solicitor, the Honorable Frank J. Barry.

On December 26, 1961, Mr. Barry rendered his opinion that the pay-out principle was not authorized by the Federal Reclamation Laws and that, in consequence, the proposed contracts were not valid (68 I.D. 372). On December 29, 1961, Attorney General Kennedy concurred in that opinion (68 I.D. 370).

1962 - 1965

The Bureau of Reclamation entered into new negotiations with the local interests on the Kings and Kern Rivers early in 1962. The Bureau assured the local interests that it would arrange to have a "court test" of Mr. Barry's opinion. Accordingly, the contracts provided that acreage limitation provisions of Reclamation Law would be applicable to the project if, but only if, required by the laws of the United States on the dates of the execution of the contracts, which occurred in the latter part of 1964.

One of the Kings River contracting units, the Tulare Lake Canal Company, elected to pay its share of the construction cost in cash immediately after its contract was executed. Promptly thereafter the United States Department of Justice commenced a suit in the United States District Court for the Eastern District of California to enjoin the canal company from serving stored water to excess landowners who had not executed recordable contracts.

The contract for use of the storage space in Isabella Reservoir on Kern River was executed in October, 1964, and became effective after certain validation proceedings were completed on March 30, 1965. On the following day, the contracting districts paid the United States the sum of $4,573,000 which represented the portion of the construction cost allocated by the Government to the irrigation benefits of the project.

No lawsuit has ever been instituted by the Government with respect to the Isabella Project on Kern River.

1972

The United States District Court decided the case of the United States v. Tulare Lake Canal Co. in favor of the landowners. The Court held: first, that the Pine Flat Project was not subject to Reclamation Law, and second, that if it were subject to Reclamation Law, the pay-out principle was a valid interpretation of Reclamation Law and therefore the contracting entities could relieve themselves of the acreage limitations by paying the entire amount of the allocated cost in cash at the outset, as Tulare Lake Canal Co. had done. The Court also held that the official representiatives of the Government had made many representations to the Kings River interests that the pay-out principle was valid, and the Government was bound by those representations since the local interests had relied upon them to their detriment. (340 F. Supp. 1185)

1976

The Court of Appeals for the Ninth Circuit reversed the District Court, holding that the Pine Flat Project was subject to Reclamation Law by virtue of Section 8 of the 1944 Flood Control Act, and that the pay-out principle was not a valid interpretation of the Reclamation Laws. The Court did not deal with the effect of the landowners' reliance upon the representations by Government officials that the pay-out principle was valid. (535 F. 2d 1143)

1977

A petition for a writ of certiorari filed by the Tulare Lake Canal Company in the Supreme Court of the United

States was denied (429 U.S. 1121). Mr. Justice Powell voted for granting the writ. (The denial of a writ of certiorari by the Supreme Court of the United States does not constitute an affirmance or approval of the decision of the lower court. It means only that, out of the approximately 5,000 petitions filed each year, the Supreme Court did not select this particular case as one of the approximately 150 cases to which it would give its attention during the year.)

In December 1977 the United States District Court rendered its decision in favor of the Government on the so-called "Constitutional Issues" which had been reserved for later determination in the original trial of the Tulare Lake Canal Company case. Tulare Lake Canal Company promptly filed an appeal from that decision.

1979

In October a petition for a rehearing of the 1976 Tulare Lake Canal Company case was filed with the United States Court of Appeals by Tulare Lake Canal Company. The petition requested the Court to reconsider its 1976 decision on the "Pay-Out Principle" and other issues in the light of the new guidelines for construction of the Reclamation Laws laid down by the Supreme Court of the United States in the so-called "New Melones case", California v. United States (1978), 438 U.S. 645. On November 29th the three judges of the Court who rendered the 1976 decision (Chief Judge Browning and Judges Duniway and Wallace) entered an order requesting the Government to respond to the petition for rehearing.

The briefing of the appeal from the 1977 District Court decision on the constitutional issues was completed during 1979, but the Court has not yet calendared the appeal for oral argument.

1980

In January the Department of Justice of the United States filed its response to the petition for rehearing of the 1976 Tulare Lake decision, and in February counsel for Tulare Lake Canal Company filed its reply. In November the petition was orally argued before the same panel of the Court of Appeals which heard and decided the case originally.

No ruling has been made on the petition for rehearing. If the petition is granted, the Court will in all probability ask the parties to file new briefs taking into account the new guidelines mandated in the New Melones case. In that event, the final result may be quite different from the result reached in the 1976 opinion.

Obviously the 1976 decision by the Court of Appeals disapproving the "Pay-Out Principle" is not yet final, and it may never be final. No injunction has ever been issued to carry out the mandate embodied in that decision.

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December 10, 1981

The **Chairman**. Thank you. It was not said badly for a big city lawyer representing rural people.

I thank you very much for your testimony.

I am hopeful that the Corps exemption is not a matter of controversy. It has been approved by this committee and the Senate in the past. It has been approved by the committee in the other body.

We started from the premise that issue was pretty well behind us. I hope it stays there.

Mr. **Enersen**. I would add to that, Mr. Chairman, that it has also been approved by the present administration.

The **Chairman**. That is correct. Thank you all very much.

We have added a couple of names to the last panel.

I would ask Mr. John Fraser, Jack Stone, Ned Smith, and William McFarlane to come forward and take your places at the table and then we will hear the others.

STATEMENT OF JOHN FRASER, EXECUTIVE DIRECTOR, ASSOCIATION OF CALIFORNIA WATER AGENCIES

Mr. **Fraser**. Mr. Chairman, my name is John Fraser.

I believe you also have a statement that is a joint statement. The purpose of that statement is to illustrate the principle that the agricultural and business community in the State of California is very much in favor of legislation such as yours to clarify the reclamation law.

On behalf of the water people and the business community in the State of California, Mr. Chairman, we congratulate you for your leadership in introducing your legislation. We appreciate it very much.

There are several points I will make and witnesses that follow will expand on many of these points.

The two-track option system in your bill, we are very much in favor of except we do not believe it would be wise to require a contract amendment in order to exercise the option. We think that would be counterproductive and probably would not result in the bill being fully utilized.

The **Chairman**. If I may interrupt at this point. That is a matter where there has been a thread of conversation running through several statements today with that as the central point, some on one side of it and some on the other side of it.

Would there be administrative difficulties if we permit the choice to be made by individual water users rather than district by district? Is there going to be an insurmountable difficulty for the districts themselves?

Mr. **Fraser**. I do not believe so. Certainly if any of the California witnesses who follow disagree, I would stand corrected.

The **Chairman**. I would invite a comment from others if you wish to make a comment with respect to that question. There have been substantial comments on both sides of that issue in the statements up to this point.

Thank you.

Mr. **Fraser**. Just a very brief comment on leasing which will be expanded upon by other witnesses. We do support the concept of unlimited leasing. We do not believe there should be any restriction with respect to corporate ownership, whether it is 25 owners or 35 or 15 or 10. It is an arbitrary limit and at some point, whenever you deal with arbitrary limitations, you are going to find inequities.

We would say all corporations should be eligible to take advantage of the program, whatever it might be.

With respect to enforcement of the limitations themselves, we would suggest this be done on a district-by-district basis. There are considerable administrative problems that would be encountered by both the districts and the Bureau if we were to try to enforce this limit throughout the reclamation West.

There is no evidence of any abuse of the program at this time and we think in the absence of such evidence, another bureaucracy should not be created to deal with a problem that does not exist.

The issue of commingling of waters is very important to us in California. We have many individual projects and particularly the State water project whose waters are commingled with the Federal Central Valley project. We want to make absolutely sure that in joint use of any Federal facility, acreage limitations would not apply merely through that joint use of facilities.

To comment on the Small Reclamation Projects Act, I notice that was mentioned, we would certainly suggest that be included in any increase in acreage allowances, that is done by the committee.

Thank you.

[The prepared statement of Mr. Fraser follows:]

STATEMENT
of the
Association of California Water Agencies
to the
Committee on Energy and Natural Resources
United States Senate
on Reclamation Reform Legislation

December 10, 1981

The Association of California Water Agencies appreciates the opportunity to appear before your Committee in support of S. 1867, introduced by Chairman McClure and ten other Senators, to reform federal reclamation law. The Association is composed of two hundred and eighty publicly owned water agencies throughout California including almost all agencies that contract with the Bureau of Reclamation for irrigation water. These agency members deliver agricultural water to nearly 8 million acres of farmland in California.

Through water supply projects developed by farmers, water districts, the State and the Bureau of Reclamation, agriculture has become the number one business in California and has made the State the largest producer of agricultural products in the nation. A combination of climate, sophisticated farming practices and the availability of irrigation water during our long dry season have enabled our farmers to consistently produce high quality crops that not only serve the nation but through exports bring substantial income to the United States from foreign nations.

The introduction of S. 1867 represents an important breakthrough in resolving a long standing problem in the interpretation of federal reclamation law. Federal policy and legal interpretations of the law were consistent until the advent of the last administration when abrupt reversals of these policies and legal views

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Presented by John Fraser, Executive Director.

created great uncertainty for farmers in their planning, marketing and financing. Congress must review and revise the law so that stability can be returned to today's farming operations.

California agriculture and the Association have participated in the Farm/Water Alliance and support its position. The Alliance represents agriculture throughout Reclamation's service area and represents most of the interests supporting this bill.

I would like to address several issues of particular importance to the Association's members. Reclamation irrigation service is one of the most important sources of irrigation water in California. However, it is far from the only source. Many farm areas and water service entities using non-federal water resources are intermingled with reclamation service areas or use common sources of water. When water from non-federal sources is comingled with water developed by a Bureau of Reclamation project, whether in an impoundment, canal, stream or in the underground, the application of reclamation law must be clearly defined so that it does not apply to lands irrigated by waters from non-federal sources.

This comingling arises under a number of specific situations in California and I am sure throughout the West. California has constructed its own State Water Project acquiring water rights and financing independently of the Bureau of Reclamation. However, its water supplies are comingled in the Sacramento River, the Sacramento-San Joaquin Delta and in the jointly constructed San Luis Dam and portions of the Canal south of San Luis. Further, many individuals and water districts have acquired water rights in, and built projects on, streams where Bureau projects also operate and these waters are diverted both on the surface and from the underground for irrigation. There should be no question and it should be clearly defined in the law that reclamation limitations do not apply to those who irrigate from these non-federal sources.

We agree with the two track or optional approach proposed in the bill under Title II. Many farmers have conformed their operations to present reclamation law requirements and will not wish to change. However, for those who wish to take service under the optional provisions, this new approach will permit them to alter their farming practices in the most efficient and productive way within federal policy as established by Congress.

The optional provision as written requires a contract amendment for it to become operative. We question either the need or desirability for requiring this formal a mechanism. Water districts should be able to operate under the law as adopted and the Bureau can establish procedures which recognizes the availability of the optional provisions. This should make the selection process easier, provide for ease of administration and save additional red tape.

Further administrative problems will be created unless land holdings are determined on a district by district basis. Proposals that acreage holdings be identified on a west-wide basis will require that the Bureau of Reclamation take over the responsibility from water agencies for monitoring and approving water deliveries to individual farms and parts of farms where some of it is leased. The magnitude of this administrative task is very real and its costs will be enormous. While certification procedures, which have been proposed, give the appearance of simplification, unrecorded short term leases will prevent verification or auditing so a massive record keeping operation would still be required. Federal verification practices which always involve considerable time lapse could hamper districts where illegal sales were made because of the requirement for west-wide accounting. Present practice has been to consider limitations on a district by district basis and the only justification for such a radical change would be to correct some serious abuse. The record is devoid of any evidence that such abuses have occurred.

Under the optional provisions, we agree with the approach used for the determination of full cost through the calculation of construction and operation and maintenance costs. In the computation of interest, we feel that the formula provided in Section 201(d) of H.R. 4265 protects the United States in identifying the date which is to be the basis for the calculation.

The optional provision also logically addresses the farm size issue with respect to leasing. In establishing new ownership limitations and providing a triggering device for the repayment of full costs including interest on leased land, the so-called "subsidy" is eliminated and the Bureau becomes a provider of service for which it is paid. This contributes to the high productivity of food and fiber and lets economics of a free market act as the controlling factor in farm operations.

The same principle should apply for corporate ownership. Limitations on the number of beneficiaries is incomsistent with federal practice in its treatment of all other areas of private industry. Arbitrary size limits defy logic and the long accepted principle in federal law that corporations be treated equally with individuals and other business associations should be adopted here. The full cost provision will apply equally to corporations as to individuals and corporate farmers should have the opportunity to participate in farming on the same basis as corporations do in participating in other federal activities such as operating barges and ships on our inland waterways and in our ports or in utilizing our postal service or, as airlines do, in benefiting from federally operated navigational services.

An area not covered in the bill which should be included is the small reclamation project loan program. Not only should those farms receiving water service under the various acts in this program have a policy consistent with the bill but loans have been made to water districts with regular Bureau water service contracts and conflicts will arise in the application of the law if the same rules do not apply to both.

In closing, I again wish to thank the Committee for proceeding with this bill. It resolves many long standing issues and puts to rest areas of uncertainty such as residency and the application of reclamation law to Corps of Engineer projects. With these issues behind us, western agriculture can proceed to operate under clear congressional guidelines.

The CHAIRMAN. Thank you very much.

Mr. Stone.

STATEMENT OF JACK STONE, PRESIDENT, BOARD OF DIRECTORS, WESTLANDS WATER DISTRICT

Mr. STONE. My name is Jack Stone. I am president of the board of directors of the Westlands Water District of California. The Westlands is the largest district of its kind in the Nation. It contains well over 600,000 acres.

Westlands supports S. 1867. The historic interpretation and administration of reclamation law is prserved under your title I option with the 160-acre ownership limitation while title II provides for expanded ownership of the farmer if the farmer agrees to either a farm-size limitation or to payment of additional water charges.

This two-track approach is not only good policy in our opinion but it is a very practical way of protecting the rights of the parties to existing contracts and those who have relied on prior governmental promises and provides a flexible means of adapting reclamation law to meet changes in farm economics.

This approach allows a choice.

Central to this issue is the fact that from 1902 to the present, the acreage limitation provisions of reclamation law have been expressly based on ownership. The limitation has been consistently applied by the Department of Interior in accordance with this expressed direction.

Congress has been aware through the years that through leasing and ownership combinations, the sizes of farming operations receiving reclamation project water have been larger than the eligible size of ownership.

With this knowledge, Congress has never seen fit in the 75 years since enactment of the original Reclamation Act to change the law so as to limit the size of eligible farming operations. Thus, under current law and its historic application, ownership is the cornerstone of the acreage limitation. Farm size is not.

S. 1867 takes this important factor into account. Title I of the bill was carefully drafted to preserve the rights of landowners and farmers in the existing reclamation projects who wish to continue farming as they have.

Title II is for those who wish to own a larger tract of land and accept a farm size limitation or pay a higher price for water for additional leased land. This is an option that should be available to those who are willing and able to utilize it.

As for the cost of the water, we would warn that it may be an empty option if the interest rate is so high that the water is not affordable. This happened. A tenant farmer could not lease additional land and the whole intent of title II would never materialize.

To attempt to get more money into the Federal Treasury by raising the interest rates to intolerable levels will surely result in no additional money flowing to the Federal Treasury.

We urge the adoption of the full cost definition contained in H.R. 4265. This is a fair and equitable method of computing costs as well as an interest rate. In fact it probably tilts in favor of the Federal

Government as far as an interest rate is concerned because it provides a floor even though the computed rate may be lower.

We would like to keep the law understandable. We would urge one of the things you should strive for in enacting new legislation is simplicity of administration, for the Federal Government, for contracting districts and above all, the farmers.

Typically districts have been responsible for administration of the law within the districts. It appears the administrative burden of a district could be substantially increased under the proposed bill.

Farm size for the first time would have to be monitored under title II to make the necessary water pricing calculations. To simplify administration and to the extent possible, a certification process could be utilized, an affidavit stating the acreage of a farm could be filed with the district or Bureau by the farmer with the appropriate penalty for falsification. This would eliminate the burdensome job.

Regarding title I, the current system is well known and well understood.

You asked about individual decisions rather than district decisions and if that would cause us any problem. I think not the way we would run our district. I think it would work very well to have individual decisionmaking.

With that, we want to say we certainly think the bill you have put forth would clarify and modernize the reclamation law and the basic principles of this bill would accomplish that and we want to support it and all its principles.

Thank you.

[The prepared statement of Mr. Stone follows:]

STATEMENT OF WESTLANDS WATER DISTRICT
ON PROPOSED ACREAGE LIMITATION LEGISLATION
BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATIONAL RESOURCES

BY

JACK STONE
PRESIDENT, BOARD OF DIRECTORS

DECEMBER 11, 1981

I. INTRODUCTION

My name is Jack Stone. I am President of the Board of Directors of Westlands Water District. Westlands is the largest district of its kind in the nation, containing over 600,000 acres. It is one of the more recent reclamation projects to be constructed, and has been characterized by some extremely large ownerships and farming operations.

Deliveries of Project water from the San Luis Canal began in Westlands in 1968. Since then, the percentage of land eligible to receive Project water has increased from 22 percent to more than 85 percent; approximately 353,000 acres have been placed under recordable contract; more than 135,000 acres of recordable contract lands have been sold; the number of landowners and farmers in the District have each more than doubled; and the District's average farm size has been cut approximately in half.

This record of compliance with present law is unmatched in reclamation history. Despite a court ordered moratorium on excess land sales, which has been in effect for the past five years, more excess land has been made eligible and more excess land has been sold in Westlands than throughout the entire West.

Critics have said that the reclamation law has failed -- that it has been abused. We disagree. As a District we have enforced compliance, and speaking for farmers in the District, I can say we have abided by what our government said. And the unprecedented breakup of land speaks for itself.

II. WESTLANDS SUPPORTS A "TWO-TRACK" SYSTEM

Under S 1867, historic interpretation and administration of reclamation law is preserved under the Title I option with a 160-acre ownership limitation, while Title II provides for expanded ownership if the farmer agrees to either a farm size limitation or to payment of additional water charges.

This "two-track" approach is not only good policy, but is a very practical way of (1) protecting the rights of parties to existing contracts and those who have relied on prior governmental promises and (2) providing a flexible means of adapting reclamation law to meet changes in farm economics. And importantly, this approach allows a choice.

Whole economies have developed based upon the historic interpretation of existing law. In many cases, persons in reclamation projects would not have agreed to purchase land subject to reclamation law, or to sign recordable contracts, if they had thought the ground rules or the law would change. Thus, changing the law without making provision for past government commitments would be unfair and a violation of fundamental rights.

Central to this issue is the fact that from 1902 to the present, the acreage limitation provisions of reclamation law have been expressly based on ownership. The limitation has been consistently applied by the Department of the Interior in accordance with this express direction. Congress has been aware through the years that through leasing and ownership combinations the sizes of farming operations receiving reclamation Project water have been larger than the eligible size of ownerships. With this knowledge, Congress has never seen fit in the 75 years since enactment of the original Reclamation Act to change the law so as to limit the size of eligible farming operations.

Thus, under current law, and its historic application, landownership is the cornerstone of the acreage limitation; farm size is not.[1/] S 1867 takes this important factor into account. "Track One" or Title I of the bill was carefully drafted to preserve the rights of landowners and farmers in existing reclamation projects who wish to continue farming as they have.

On the other hand "Track Two" or Title II is for those who wish to own a larger tract of land and accept a farm size limitation or pay a higher price for water for additional leased land. This is an option that should be available to those who are willing and able to utilize it.

III. COST OF WATER

We would warn that it may be an empty option, however, if the interest rate is so high that the water is not affordable.

If this happens, a tenant farmer could not lease additional land and the whole intent of Title II would never materialize. Any attempt to get more money into the federal treasury by raising the interest rate to intolerable levels will surely result in no additional money flowing to the federal treasury.

We urge the adoption of the "full cost" definition contained in HR 4265. This is a fair and equitable method of computing costs as well as an interest rate. In fact, it probably tilts in favor of the federal government as far as an interest rate is concerned because it provides a floor even though the computed rate may be lower.

IV. KEEP ADMINISTRATION OF THE LAW UNDERSTANDABLE

We would urge that one of the things you should strive for in

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1/ The Bureau of Reclamation requirement that it will disapprove long-term leases is consistent with this conclusion since some long-term leases may fairly be construed as being tantamount to ownership enacting new legislation is simplicity of administration -- for the federal government, for contracting districts, and above all, for the farmer.

Typically, districts have been responsible for administration of the law within the District.

The proposed amendments to the law do not change that requirement. However, it appears that the administrative burden of a district could be substantially increased under the proposed bills. For example, farm size, for the first time, would have to be monitored under Title II to make the necessary water pricing calculations and adjustments.

To simplify administration, and to the extent possible, a certification process should be utilized. For example, as to the number of acres farmed under Title II, an affidavit stating the acreage farmed could be filed with the District or the Bureau by the farmer with an appropriate penalty for falsification. This would eliminate a burdensome enforcement problem with minimal impact on the integrity of the program.

Regarding Title I, the current system is known and understood. We would therefore recommend no change in current administration practice.

We believe these processes would reduce costs and regulatory headaches of administering a new law.

V. CONCLUSION

In conclusion, Westlands Water District recommends clarification and modernization of reclamation law. The basic principles of S 1867 accomplishes this and we support these principles.

The CHAIRMAN. Thank you very much.

Mr. Smith.

STATEMENT OF NED A. SMITH, ASSISTANT VICE PRESIDENT AND ASSISTANT GENERAL MANAGER, NATURAL RESOURCES OF SOUTHERN PACIFIC LAND CO.

Mr. SMITH. Thank you, Mr. Chairman.

My name is Ned A. Smith. I am assistant vice president and assistant general manager of natural resources for Southern Pacific Land Co.

I will attempt to highlight my statement.

Let me say at the outset that we appreciate the opportunity to present testimony at this latest in a series of efforts to update and clarify the reclamation law.

Legislative concepts dating back to the last century and court decisions and administrative actions upsetting the manner in which western farming has been carried on for decades have created so much confusion that only a complete reform of reclamation law as proposed in S. 1867 could bring order to this field.

In the committee's deliberations concerning proposed amendments of the Reclamation Act, I would like to urge that whatever other changes are ultimately decided upon by the Congress, any bill adopted should provide for an orderly sales process in the breakup of excess landholdings required by the act.

It is important to note that each of our recordable contracts specifically allows a 10-year period within which the owner may dispose of the property, after which the Secretary of Interior is invested with the power of attorney to sell it for the account of the landowner.

Without such a provision we would never have signed a contract. Consequently we, as do most landowners, feel we are entitled to the contractual 10 years within which to dispose of our excess land.

As you know, due to court injunctions and a secretarial declaration, there has been a formal suspension of consideration of new excess land sales from August 1976 to the present in the Westlands Water District. That is a period of 64 months.

Prior to suspension, 2,558 acres of Southern Pacific's excess land had been sold to local farm families pursuant to the requirements of the contract at a price approved by the Secretary and other sales were pending at the time of the suspension, all long prior to the running out of the 10-year period of the respective recordable contracts.

S. 1867 contains a provision which will insure that the present owners of excess lands who have agreed to sell will receive fair treatment in this regard. The provision is section 103(d) and it provides that the 10-year period of the recordable contract is tolled only during such period of time as the Secretary has been approving sales.

We urge that it be included in the bill to report to the Senate.

We believe in the absence of such a provision there will be a significant adverse and unfair effect on the present landowners caused by a chaotic land market sure to occur if more than 200,000 acres of farmland in Westlands must be sold overnight.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Smith follows:]

STATEMENT OF
NED A. SMITH
ASSISTANT VICE PRESIDENT AND
ASSISTANT GENERAL MANAGER-NATURAL RESOURCES
OF SOUTHERN PACIFIC LAND COMPANY
BEFORE THE
SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
ON
PROPOSED BILL TO REFORM RECLAMATION LAW

DECEMBER 10 AND 11, 1981

Mr. Chairman, Members of the Committee. My name is Ned A. Smith. I am Assistant Vice President and Assistant General Manager-Natural Resources of Southern Pacific Land Company. I was formerly the Company's Chief Agronomist, and for many years I have been working in the area of leasing Southern Pacific's lands lying within what is now the Westlands Water District on the west side of California's San Joaquin Valley to local farmers. As you may know, Southern Pacific does not engage directly in farming; most of its agricultural lands are leased to local farmers on crop share leases with rentals averaging about 17% of crop proceeds.

Let me say at the outset that we appreciate the opportunity to present testimony at this latest in a series of efforts to update and clarify the Reclamation Act. Legislative concepts dating back to the last century, and court decisions and administrative actions upsetting the manner in which western farming has been carried on for decades, have created so much confusion that only a complete reform of reclamation law as proposed in S 1867 can bring order to this field. In your deliberations concerning proposed amendment of the Reclamation Act, I would like to urge that, whatever other changes are ultimately decided upon by the Congress, any bill adopted should provide for an orderly sales process in the breakup of the excess land holdings required by the Act.

As you know, before an excess landowner may receive federally subsidized water for irrigating its excess land, it must enter into recordable contracts agreeing to dispose of them within ten years.

At the hearings held by this Committee April 12 and 13, 1978, Southern Pacific Land Company President O. G. Linde described the extensive analysis we went through before agreeing to subject Southern Pacific's lands to recordable contracts requiring them to be disposed of, so I will not burden the record with a repetition of that testimony.

It is important, however, to note that each of our recordable contracts specifically allows a ten-year period within which the owner may dispose of the property, after which the Secretary of the Interior is vested with a power of attorney to sell it for the account of the landowner. Without such a provision, we would never have signed the contracts. Consequently, we, as do most landowners, feel we are entitled to the contractual ten years within which to dispose of our excess land. As you know, due to court injunctions and a Secretarial declaration, there has been a formal suspension of consideration of new excess land sales from August, 1976 to the present in the Westlands Water District. Prior to suspension 2,558 acres of Southern Pacific's excess lands had been sold to local farm families pursuant to the requirements of the contracts, at prices approved by the Secretary, and other sales were pending at the time of the suspension, all long prior to the running out of the ten-year period of the respective recordable contracts.

Unless some adjustment is made, the excess landowners will be forced to bear the risk of a drastic and artificial decline in the market value of their lands. Current economic conditions provide a ready illustration of the potential. The excess owners' right to a phased sales program of their lands, as bargained for and reflected in the recordable contracts between them and the U.S. Government, has been crippled by the suspension of sales and the confusion that has followed. The larger the landowner, the worse the problem. In the case of Southern Pacific, we had embarked on an orderly sales program prior to the suspension and would have offered for sale over 60,000 acres by this time. If we are forced, by delay not of our making, to dump the entire 81,834 acres remaining to be sold on the market at one time, along with all the other lands which will have to be sold by other excess landowners, two things will very probably happen: there will not be purchasers for all of the land at any realistic price, and what is sold will be sold at a fraction of its fair market value. S 1867 contains a provision which will ensure that the present owners of excess lands who have agreed to sell will receive fair treatment in this regard. The provision is Section 103(d), and it provides that the ten-year period of the recordable contracts is tolled during such period of time as the

Secretary has not been approving sales. We urge that it be included in the bill you report to the Senate. We believe, in the absence of such a provision, there will be significant, adverse and unfair effects on the present landowners caused by a chaotic land market sure to arise if more than 200,000 acres of farmland in Westlands must be sold overnight.

Thank you for allowing me to appear before you today. I would be pleased to try to answer any questions you might have.

The CHAIRMAN. Thank you very much.
Mr. McFarlane.

STATEMENT OF WILLIAM F. McFARLANE, PRESIDENT, CALIFORNIA WESTSIDE FARMERS

Mr. McFARLANE. Thank you, Senator.

I am Bill McFarlane, a Fresno County farmer and president of California Westside Farmers. We are a voluntary organization of farmers within the Westlands Water District.

Our members are both small- and large-scale farmers with almost 40 percent farming 1,280 acres or less, two-thirds having farms under 2,560 and only about a fourth operating over 5,000.

Much of that land, certainly in the higher acreage numbers, is under recordable contracts, under lease, and will be sold within a few years and fragmentation of our farms will result.

California Westside Farmers supports the provisions of S. 1867. This measure upholds the longstanding commitments and interpretations of existing law, makes needed changes to modernize and reform the law and gives farmers an additional option for expanded ownership.

We support the concept of title I which would allow farmers and landowners to continue to comply with reclamation law under the terms and conditions to which they committed themselves at the outset of their respective projects.

Title I fully recognizes past representations by the United States and the resulting personal and financial commitments made by farmers and landowners.

We certainly commend you, Senator, and the other authors of this measure for keeping faith with those farmers who entered into reclamation projects for over the last half century based on consistent interpretations and explanations as to what reclamation law requires and allows.

I wish to comment on a provision of title I which would continue to allow leasing.

This provision recognizes that the benefit of a reclamation project goes to the owner of the land rather than to the person who is leasing and farming that land. The eligibility to receive project water increases the productive value of the land which in turn means the land commands a higher rent.

In Westlands, for example, land which does not receive project water produces only about two-thirds the dollar value of the crops as the land receiving project water.

In terms of rental rates, our most recent investigation shows that land receiving project water demands $70 to $100 more per acre than land not receiving project water.

Actual rental rates vary widely from as low as $50 an acre up to $200 or more.

It is clear to us that the practice of leasing does not interfere in any way with the broad distribution of project benefits to the owners of the land. Any subsidy is passed through the landowner and is limited by the ownership limitation.

We also support the concept of title II which would allow a larger ownership for a family group, a partnership or other entity.

This larger base of ownership is needed in many situations to eliminate the disruptions that can come about through changes in the make-up of the family unit or legal entity.

The larger ownership would allow a family to maintain an economic unit even if one or more members of the family decided to pursue some other career and no longer wished to participate in the farm ownership.

California westside farmers has always opposed rigid limits on farm size. Consequently we are pleased that leasing above the ownership base would be allowed under title II as well as under title I.

We find it difficult to justify a payment of a full cost water rate on leased land since the subsidy benefit actually goes to the landowner.

Because of our overriding concern that there be no limit on farm size, we are willing to compromise on this principle and to pay interest on leased land provided it is reasonable and affordable.

In regard to full cost, along with Mr. Choules, we would point out it is virtually impossible to determine the precise cost to the Treasury of financing reclamation projects. A substantial portion of the expenditures come from the reclamation fund which includes construction costs previously repaid by water users themselves.

In addition, the Treasury incurs an actual interest cost on only a small portion of the total general fund expenditures in any given year.

Very careful studies show that reclamation projects generate additional tax revenues for the Treasury that repay the total construction costs every few years. In reality the Treasury and taxpayers are earning a large profit from the money spent on reclamation projects.

In our view, an unreasonably high interest rate would amount to a de facto limit on farm size because the cost of water would be so high that farmers could not afford it and would be forced to hold their farm sizes below the acreage at which full cost is required.

To illustrate that point, recent studies show that in the Westlands area, the average net return per acre in 1978 was about $90 which is about a 7.5-percent return on investment. Each acre receives about 2⅓ acre-feet of project water for a total water cost per acre of about $35.

With interest added at the 5 percent minimum as provided in H.R. 4265, the water cost would rise by $21 an acre and the return would drop to $69.

With interest calculated at 10 percent, the water cost would go up by $56 per acre leaving a return of approximately $34. At 15 percent interest, there would be no profit at all, in fact, a loss would be indicated before you got to the 15-percent level.

As we have indicated, if the interest rate is unreasonably high, farmers will have no choice but to avoid paying it and there will be no additional revenues returned to the Government. There would be no winners, only losers.

We are unable to support the calculations of full cost on the basis of current rates paid on long-term Treasury obligations.

Of even greater concern is the possibility of having to pay the high current market rates of short-term securities.

We feel short-term obligations and the interest rates on those obligations should not be applied to these long-term investments.

We would support the formula for interest used in H.R. 4265.

We strongly support the provision which would allow leasing of an additional 1,600 acres above the 1,600-acre ownership before full cost would apply because this would be of great help to our family farms. We have no objection to the provision of title III requiring arm's length leasing because we believe it is occurring now due to market competition.

We would only urge that under the provision of title III that any specific information on individual leases be kept confidential.

Senator, we thank you very much for the opportunity to testify before you.

[The prepared statement of Mr. McFarlane follows:]

STATEMENT OF

WILLIAM F. McFARLANE, PRESIDENT

CALIFORNIA WESTSIDE FARMERS

BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Washington, D. C.

DECEMBER 10-11, 1981

I am William F. McFarlane, a Fresno County farmer and president of California Westside Farmers, a voluntary organization of farmers in the Westlands Water District. This is a 600,000-acre district which receives irrigation water from the San Luis Unit of the Central Valley Project. Our members include both small- and large-scale farmers, with almost 40 percent farming 1,280 acres or less. Two-thirds have farms of under 2,560 acres; only about one-fourth operate farms of 5,000 acres or more -- and much of that land is under recordable contract and will be sold wihin a very few years.

California Westside Farmers supports, in principle, the provisions of S. 1867. In our view, this measure upholds the longstanding commitments and interpretations of existing law, makes needed changes to modernize and reform the law, and gives farmers an additional option for expanded ownership.

We fully support the concept of Title I, which would allow farmers and landowners to continue to comply with reclamation law under the terms and conditions to which they committed themselves at the outset of their respective projects. As farmers and landowners in the Westlands area, we have stated repeatedly that we intend to fulfill the commitments we have made to abide by the requirements of reclamation law -- as those requirements were represented to us at the time we made those commitments. We do not believe there is a moral or legal obligation to meet a new set of requirements imposed retroactively. While we recognize that present law needs to be modernized and updated, we feel it is achieving the purpose of widely distributing project benefits and, at the same time, providing significant new farming opportunities.

Title I of S. 1867 fully recognizes those past representations by the United States and the resulting personal and financial commitments made by farmers and landowners. We commend the authors of this measure for keeping faith with those who have entered into reclamation projects over the past half century, or more based on consistent interpretations and explanations as to what reclamation law requires -- and what it allows.

In particular, we wish to comment on the provision of Title I which would continue to allow leasing. This provision recognizes a fact that we as farmers have known all along -- but one often misunderstood by those unfamiliar with agriculture. That fact is that the benefit of a reclamation project -- the subsidy -- goes to the owner of the land, rather than to the person who is leasing and farming that land. The reason is quite simple. The eligibility to receive project water increases the productive value of the land which, in turn, means that the land commands a higher rent. In Westlands, for example, land which does not receive project water produces only about two-thirds the dollar value of crops as land receiving project water. In terms of rental rates, our most recent investigations show that land receiving project water commands from $70 to $100 more per acre than land not receiving project water. Actual rental rates vary widely, from as low as $50 an acre up to $200 or more.

It is clear to us that the practice of leasing does not interfere in any way with the broad distribution of project benefits to the owners of the land. The subsidy -- whatever it is -- is passed through to the landowner and is limited by the ownership limitation.

We also support the concept of Title II, which would allow a larger ownership for a family group, partnership or other entity. This larger base of ownership is needed in many situations to eliminate the disruptions that can come about through changes in the makeup of the family unit or legal entity. This larger ownership would allow a family to maintain an economic ownership unit, even if one or more members of the family decide to pursue some other career and no longer wish to participate in the farm ownership. In addition, the larger ownership would greatly increase the financial stability of our family farms. Family units would be able to build up a larger equity in land, which would enhance their ability to borrow for equipment and crop production, survive the inevitable economic downturns, and also allow better estate planning. For these and other reasons, we would expect a great many farmers -- even those now farming on a small scale -- to choose this option.

California Westside Farmers has always opposed rigid limits on farm size. Consequently, we are pleased that leasing above the ownership base would be allowed under Title II, as well as under Title I. We find it somewhat difficult to justify the payment of a "full cost" water rate on leased land, since the subsidy benefit actually goes to the landowner. However, because of our overriding concern that there be no limit on farm size, we are willing to compromise on this principle and to pay interest on leased land, provided it is reasonable and affordable.

In regard to "full cost," we would point out that it is virtually impossible to determine the precise cost to the Treasury of financing reclamation projects. A substantial portion of the expenditures comes from the Reclamation Fund, which includes construction costs previously repaid by water users themselves. In addition, the Treasury incurs an actual interest cost on only a small portion of the total general fund expenditures in any given year. Finally, very careful economic studies show that reclamation projects generate additional tax revenues for the Treasury that repay the total construction costs every few years. In reality, the Treasury -- and taxpayers -- are earning a large profit from the money spent on reclamation projects.

It seems to us that you, as members of the Committee and Congress, will be sitting in judgment to determine the proper balance between maintaining a prosperous agriculture and increasing the returns to the government through a higher water cost. In our view, an unreasonably high interest rate would amount to a de facto limit on farm size, because the cost of water would be so high that farmers couldn't afford it and would be forced to hold their farm sizes below the acreage at which "full cost" is required.

To illustrate that point, recent economic studies show that in the Westlands area, the average return per-acre is about $90, which is about a 7½ percent return on investment. Each acre receives about 2-1/3 acre-feet of project water, for a total water cost per-acre of about $35. If interest is added at the 5 percent minimum (as in H.R.4265), the water cost would rise by $21 an acre and the return would drop to $69. If interest was calculated at 10 percent, the water cost would go up by $56 per acre, leaving a return of only $34 an acre. At 15 percent interest, there would be no profit at all. (These figures are based on 1978 costs and prices.)

As you can see, if the interest rate is unreasonably high, farmers will have no choice but to avoid paying it -- and there will be no additional revenue returned to the government. There would be no winners, only losers. We are unable to support the calculation of "full cost" on the basis of current rates paid on long-term Treasury obligations, simply because the water costs would not be affordable. We would support the formula used in H.R. 4265.

At the same time, we strongly support the provision which would allow leasing of an additional 1,600 acres above the 1,600-acre ownership before full cost would apply, because this will be of great help to our family farms. And, we have no objection to the provisions of Title III requiring "arms length" leasing, because we believe that is occurring now due to market competition. We would only urge that any specific information on individual leases be kept confidential.

We appreciate the opportunity to present these remarks and ask that we be allowed to submit a more detailed written statement at a later date for inclusion in the hearing record at this point, if that is appropriate. I would be happy to answer any questions the Committee members may have.

'Westlands' and Federal Reclamation Law

Aerial view showing the San Luis Canal a few miles from Los Banos, California, on the west side of the San Joaquin Valley.

Westlands Water District, located in the central San Joaquin Valley of California, often is singled out for special attention in the present controversy over the federal reclamation program. Three apparent reasons for this are: (1) Westlands, with about 600,000 gross acres of farmland, is the largest single irrigation district in the nation subject to acreage limitation under reclamation law; (2) Westlands is part of one of the newest reclamation projects, the San Luis Unit of the Central Valley Project, authorized by Congress in 1960; and (3) Westlands contained several very large pre-project land ownerships and irrigated farming operations.

The most frequent misrepresentations of the Westlands situation are that the large ownerships and farming operations have come about **because** of the project, and that large landowners and irrigators are trying to "evade" the requirements of reclamation law.

Actually—as detailed later—the large landownerships and farming operations existed before the Project was authorized, and Westlands' landowners and farmers have complied fully with the law. As a result, the number of landowners has doubled, two of the largest farming operations already have been completely dissolved, the number of farming operations has more than doubled and the average farm size has been cut in half.

This brochure has been prepared by California Westside Farmers* to present the facts about the development of farming and the application of reclamation law in Westlands.

What Is Reclamation Law? What Does It Require?

Federal reclamation law consists of a number of statutes governing the construction and operation of federal irrigation projects in 17 Western states. The first reclamation act was adopted in 1902, primarily to settle and develop federally-owned arid and semi-arid lands and make them productive for agriculture. But for the past several decades, most projects have been authorized and constructed to increase or improve the water supplies for land in private ownership and already under irrigation.

**California Westside Farmers is a voluntary organization of farm operators within Westlands, formed in 1976 to represent the interests of its members — large and small alike — in the reclamation law controversy.*

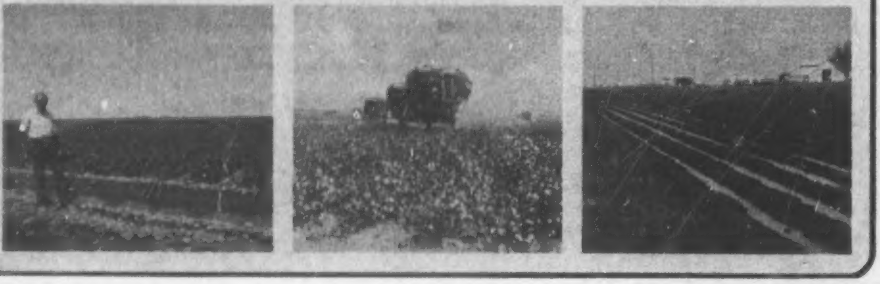
Under reclamation law, irrigators are required to repay to the federal government the project costs allocated to irrigation facilities, without interest, over a 40- to 50-year period. (In some projects, although NOT in Westlands, the repayment is limited to the irrigators' "ability to pay.") To achieve widespread distribution of benefits, the use of project water currently is limited to 160 acres in any single ownership. Owners of more than that amount may receive project water on their "excess" land (in excess of 160 acres) only if they sign binding contracts to sell that land to eligible new owners within a stated time period, usually 10 years. These recordable contracts (so-called because they are recorded in county land records) also provide that excess land must be sold at prices which do not reflect any benefit from the availability of project water. The contracts also give the Secretary of the Interior a power of attorney to sell the land if the owner fails to do so.

The limitation on the basis of ownership insures that project benefits—primarily the subsidy resulting from interest-free repayment of federal project cost—flow to the owners of land. This is because delivery of project water amounts to an "improvement" to the property, enhancing its value just as remodeling, for instance, enhances the value of a home. And even if the land is leased to another farmer, the benefit still flows to the owner because he receives a higher rent for his land. This assures the broadest distribution of project benefits, regardless of farm size.

Existing law—and its historical interpretation—are clear. Eligibility for water has always been determined solely by the 160-acre individual ownership limitation. There has never been a limitation on the size of any farming operation or on the number of individuals who could participate. Individual landowners have always been free to lease their land to others; there has never been a requirement that they farm it themselves. As then-Commissioner of Reclamation Michael Straus (a strong advocate of acreage limitation) told a Senate Committee in 1947:

> ". . . the point of restriction (of reclamation law) is ownership. Ownership does not foreclose any one of a half a dozen methods of operating an agricultural enterprise."

West side farming scenes: (Top left) Farmer and his two sons near Tranquillity, California, examine a seedling. (Top center) Housing for farm employees. (Top right) A farmer examines a young stand of safflower. (Bottom left) Cotton field and irrigation canal. (Bottom center) Cotton harvest by mechanical spindle pickers. (Bottom right) A furrow-irrigated farm, with barn and shop in the background.

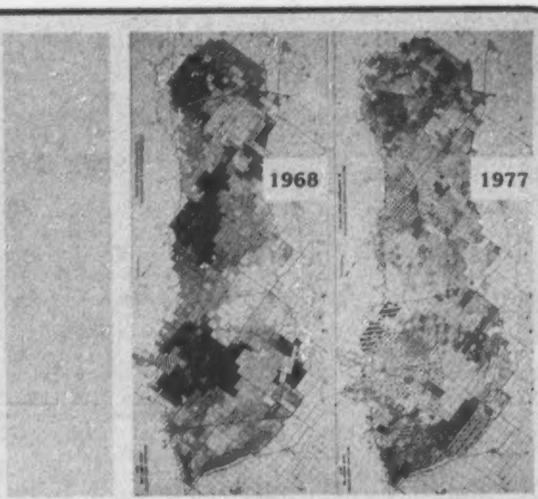


What Commitments Have Been Made?

In seeking authorization of a federal project to provide additional irrigation water, landowners and farmers in Westlands relied on the repeated assurances by federal officials that reclamation law would be applied to them just as it had been elsewhere for several decades. It was on the basis of these assurances—and the consistent interpretation of the law by both the administrative and judicial branches of government over a period of several decades — that farmers and landowners in Westlands committed themselves to participate in the San Luis Unit of the federal Central Valley Project and to be bound by reclamation law. The clear understanding by federal officials and District landowners alike was that delivery of Project water would be limited to nonexcess land (160 acres or less in a single ownership) and excess land placed under recordable contract. It was just as clearly understood by everyone involved that reclamation law imposes no restrictions on leasing, the size of farming units, or the number or relationship of participants in a farming operation.

Westlands Yesterday — And Today

All of the land in the Westlands area has been in private ownership since the early 1900's. Irrigated farming, using water pumped from underground, began prior to 1920 and gradually expanded through the years. About 95 percent of the land had been developed for irrigated agriculture before federal San Luis Canal water first became available.



Map of Westlands Water District showing the breakdown of farm units from 1968 to 1977 — the first 10 years of water service by the U.S. Bureau of Reclamation. The number of farms in the district has increased from the 216 farms shown in the 1977 map to a total of 229 farms in 1981.

Historically, the Westlands area was farmed in large operations since costs were high, but average per-acre returns were low. Wells were costly to install because of the great depth to groundwater and farmers, therefore, couldn't afford to drill enough wells to irrigate all of the acreage every year. In addition, the water and soil contained salts and other minerals which limited production to salt-tolerant crops. As a result, the typical cropping pattern placed about one-third of the land in cotton or other summer crops and one-third in winter barley, while the remaining one-third was fallowed.

Before the first significant deliveries of Project water in 1968, there were 2,491 landowners in Westlands and 97 farming operations averaging 4,640 acres.

Now, there are over 5,300 landowners (more than twice as many), the number of farming operations has increased to 229 and the average farm size has dropped to 2,137 acres. Two of the largest farms — Anderson, Clayton & Co., and Giffen, Inc. — have completely liquidated, selling nearly 77,000 acres to 607 individuals who now operate 77 separate farms. These impressive changes are the result of compliance with reclamation law — a process that is far from complete.

Compliance With Reclamation Law

As Project water gradually became available to more and more land in Westlands — mainly between 1968 and 1975 — landowners with more than 160 acres faced a difficult decision. They could limit their use of Project water to 160 acres, continue to irrigate their excess lands with groundwater and be free of any restrictions or limitations under reclamation law. Or, they could sign recordable contracts, thereby committing themselves to sell their ex-

West side harvest scenes: (Left) Tomatoes for canning, catsup and sauce. (Center) Cotton, the backbone of the farm economy. (Right) Spinach for fresh-frozen packaging.

cess land. In return, the land would be eligible to receive Project water during the 10-year term of the contracts. Once the decision was made, however, it was irrevocable.

In Westlands, landowners overwhelmingly followed through on their earlier promises to Congress that they would participate in the Project under the terms of reclamation law. A total of 353,000 acres of excess land has been placed under recordable contracts for sale to new 160-acre owners. Approximately 135,000 acres have been sold under the earliest of these contracts. However, a court order in August, 1976 halted further sales, pending adoption of formal rules and regulations on "criteria and procedures" for excess land sales.

Westlands Tomorrow

When the 218,000 acres of land remaining under recordable contracts are sold, even more change will take place in the ownership and farming patterns in Westlands. Under present law, the number of landowners benefiting from the Project must increase by at least another 1,361. If the average purchase in future sales is the same as it has been in past sales, 120 acres per person, the number of landowners could increase to a total of 7,000 or more. The number of farming operations — based on past experience—can be expected to redouble, to a total of about 450 or more, and average farm size would drop proportionately.

The CWF Position

California Westside Farmers was founded on the principle that farmers and landowners in the Westlands area entered into a good-faith agreement with their government some 20 years ago. They have complied with reclamation law. (Even former Interior Secretary Cecil Andrus, a constant critic of Westlands, was forced to admit in a Congressional hearing that Westlands and its farmers and landowners are in compliance with the law.)

Westlands farmers intend to fulfill their remaining commitments; they are not asking for repeal of the law or exemption from acreage limitation. They are asking only that the government also live up to its side of the agreement and require no more and no less than the mutually agreed upon conditions.

California Westside Farmers will also support new legislation if it preserves basic property rights and flexibility in farm size which exist under present law. We do not believe that massive new government controls on the size, structure and operation of farms are in the best interests of the nation, its productive and efficient farmers, or consumers.

California
Westside Farmers
SECURITY BANK BUILDING, 1060 FULTON MALL, FRESNO, CA 93721, TEL. (209) 485-9180

The **Chairman**. Thank you very much.

I want to ask each of you the same question I asked previously. If you have to make a tradeoff, if a tradeoff is necessary, would you prefer a higher acreage with a higher interest rate for excess lands or lower acreage with a lower interest rate for full cost recovery on excess land?

Mr. **Fraser**. As far as we are concerned, Senator, it would be very difficult. We support the two-track system.

The **Chairman**. Assuming title II rather than title I.

Mr. **Fraser**. I think you take care of a good many people but on the other hand there will be some serious hardships.

The **Chairman**. They will go above the acreage. We have that tradeoff that we are going to be forced to try to make in the process of determining whether to set that acreage limit high and accept as a tradeoff for that a higher full cost recovery rate or set the acreage lower with a lower full cost recovery calculation.

Mr. **Stone**. I would have to say if we allow the cost of water to get too high, our whole option will be unuseable.

The **Chairman**. I understand that but it does not really answer my question. Maybe you cannot.

Mr. **Stone**. I do not like to make those kind of statements with just me.

Mr. **Fraser**. That is the way I feel.

The **Chairman**. You will leave it to our judgment and then criticize the results.

Mr. **Stone**. I think so.

Mr. **Fraser**. We trust your judgment.

The **Chairman**. Thank you very much.

We have five other witnesses. I apologize but there is a vote on the floor on the farm bill. I am going to go vote. I will return and we will conclude the testimony of our last five witnesses.

[Whereupon, at 1:10 p.m., the committee was recessed.]

AFTERNOON SESSION

The **Chairman**. The committee will come to order.

We have remaining on the witness list, George Lindemann, Jim Sorensen, Gilbert Stamm, Ralph Nissen, and Frank Enos.

Gentlemen, if you will please come forward. We do not deliberately leave old friends to the last.

You are invited to summarize or make whatever statement you wish to supplement your prepared statements.

Mr. Lindemann?

STATEMENT OF GEORGE LINDEMANN, PRESIDENT, BOARD OF DIRECTORS, SAN LUIS WATER DISTRICT

Mr. **Lindemann**. Thank you. It is a pleasure to be here. It is a pleasure to have a constructive environment to try and solve our reclamation problems that we have all strived for for so long.

I am representing the San Luis Water District which is on the west side of the San Joaquin Valley, 57,000 acres. I am also a farmer in that area.

I think one of the key points we would like to make is we have relied or our farmers have relied on the contractual agreements that we have made with the Bureau of Reclamation and the United States.

Our first contract was signed in 1954 and it has been amended on two occasions since then. We feel the farmers in our area or in any area for that matter should not be subjected to retroactive changes to the law.

Our farmers and landowners are in full compliance with the law as it has been interpreted in that we have no ownerships in excess of 160 acres. In the case of excess lands, they have all signed recordable contracts if in fact they are getting the Federal water.

We agree that residency requirements should not be a part of the new law since we do feel it is outmoded.

As to your equivalency provisions, we have no objections. They are fine.

As to the period of time allowed to dispose of excess lands, we believe strongly it should be a 10-year period, which is what we have agreed to in our previous contracts.

With regard to the option to remain under 160 acres with unlimited leasing and the present cost of water or going to title II or the other option, we feel the option program is a very fair way to deal with the problem.

We do feel very strongly that it should be the individual and not the water district that makes that determination.

As to the full cost of water, it has been our understanding that the past policy of the Bureau has been that the pricing of the irrigation water should never exceed the farmer's ability to pay for that water.

Some of the interest factors that have been talked about result in our area as we understand it in about a $50-per-acre-foot increase which certainly would make the ability to lease over the full amount not really much of an option.

In the instance of cotton, it would raise our growing cost for cotton about 15 cents a pound. For alfalfa hay, in excess of an additional $20 a ton.

Somebody using that water to operate with and farm with would not really have the ability to compete.

In conclusion we would like to say we appreciate the opportunity to be here with you today and we would hope whatever resolutions we come up with on the reclamation bill certainly will allow us and California agriculture to continue to be as productive as we have been able to be in the past.

Thank you very much.

[The prepared statement of Mr. Lindemann follows:]

STATEMENT PRESENTED TO
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
IN WASHINGTON D.C.
ON DECEMBER 10TH AND 11TH, 1981
BY
MR. GEORGE LINDEMANN, PRESIDENT
BOARD OF DIRECTORS
OF THE
SAN LUIS WATER DISTRICT
LOS BANOS, CALIFORNIA

THE HONORABLE JAMES MCCLURE, CHAIRMAN:

MY NAME IS GEORGE LINDEMANN AND I RESIDE IN LOS BANOS, CALIFORNIA. I AM A THIRD GENERATION FARMER; AND, ALONG WITH OTHER MEMBERS OF MY FAMILY, WE FARM THE PROPERTIES THAT MY GRANDMOTHER AND GRANDFATHER DEVELOPED NEAR LOS BANOS STARTING IN 1928. I AM PRESIDENT OF THE BOARD OF DIRECTORS OF THE SAN LUIS WATER DISTRICT; AND, THE TESTIMONY THAT I WILL GIVE YOU TODAY HAS BEEN AUTHORIZED FOR PRESENTATION AT THIS HEARING BY THE BOARD OF DIRECTORS OF OUR DISTRICT.

THE SAN LUIS WATER DISTRICT, COMPRISING APPROXIMATELY 57,000 ACRES, LIES ON THE WESTERLY SIDE OF THE SAN JOAQUIN VALLEY IN THE VICINITY OF LOS BANOS, CALIFORNIA. WE RECEIVE MAINLY AGRICULTURAL IRRIGATION WATER FROM THE FEDERAL SAN LUIS AND DELTA-MENDOTA CANAL SYSTEMS.

OUR DISTRICT WAS FORMED IN 1951, WHILE THE DELTA-MENDOTA CANAL WAS STILL UNDER CONSTRUCTION. AT THAT TIME, APPROXIMATELY 50% OF OUR DISTRICT WAS BEING FARMED BY USING GROUNDWATER SUPPLIES OR BY DRY FARMING FOR THE GROWING OF GRAINS. A CONSIDERABLE AMOUNT OF THE LANDOWNERSHIP WITHIN OUR DISTRICT, SUCH AS OURS, HAS BEEN IN THE SAME FAMILY OWNERSHIP FOR MANY YEARS PRIOR TO

TO THE FORMATION OF OUR DISTRICT. ALL OF OUR LANDOWNERS RELIED ON THE CONTRACTUAL AGREEMENTS WITH THE UNITED STATES LEADING TO OUR FIRST SUPPLEMENTAL WATER SUPPLY CONTRACT IN 1954. DURING THE NEGOTIATIONS LEADING UP TO THE EXECUTION AND VALIDATION OF OUR WATER SERVICE CONTRACT, THERE WAS NEVER ANY DISCUSSION OR CORRESPONDENCE BETWEEN THE UNITED STATES AND OURSELVES WHICH IMPLIED A RESIDENCY REQUIREMENT, RESTRICTIONS ON LEASING OR MAXIMUM SIZED FARMING UNITS.

OUR 1954 UNITED STATES - DISTRICT WATER SERVICE CONTRACT WAS AMENDED IN 1974, ADOPTED BY A UNANIMOUS VOTE OF OUR LANDOWNERS, AND AGAIN, THERE WAS NOTHING IN THIS CONTRACT OR ANY DISCUSSION OR ANY CORRESPONDENCE WITH THE UNITED STATES, WHICH IMPLIED RESIDENCY, LEASING RESTRICTIONS OR MAXIMUM SIZED FARMING UNITS.

THROUGHOUT THE LAST 30 YEARS, OUR DISTRICT HAS RELIED ON THE ESTABLISHED POLICIES OF THE UNITED STATES IN THE DAY TO DAY AND YEAR TO YEAR ENFORCEMENT OF RECLAMATION LAW. THE UNITED STATES HAS ALWAYS EXPECTED US TO LIVE UP TO OUR CONTRACTUAL OBLIGATIONS, AND WE HAVE DONE SO. IN RETURN, WE LOOK TO THE UNITED STATES TO HONOR ALL OF IT'S PREVIOUS CONTRACTUAL COMMITMENTS TO OUR DISTRICT. THUS, AMENDMENTS TO THE 1902 RECLAMATION LAW, OR NEW LEGISLATION, WHICH SERIOUSLY AFFECTS PREVIOUS ADMINISTRATIVE POLICIES OF RECLAMATION LAW SHOULD BE CAREFULLY CONSIDERED

BEFORE THEY BECOME A MANDATE AFFECTING OUR EXISTING CONTRACTS. WE URGE THAT THE UNITED STATES "GRANDFATHER IN" EXISTING CONTRACTS WITH THE DISTRICT AND ALLOW CHANGES IN THESE EXISTING CONTRACTS TO INCLUDE PROVISIONS OF NEW LEGISLATION, IF IT IS IN THE MUTUAL BEST INTEREST OF THE UNITED STATES AND THE DISTRICT.

WE ARE VERY PLEASED THAT THE RESIDENCY REQUIREMENT WITHIN SECTION 101 OF THE SENATE BILL S-1867 IS REPEALED ONCE AND FOR ALL.

WE ARE IN FULL SUPPORT OF THE EQUIVALENCY PROVISIONS WITHIN SECTION 102 OF THIS BILL. APPROXIMATELY 50% OF THE LAND WITHIN OUR DISTRICT IS CLASSIFIED BELOW CLASS I.

WE RECOGNIZE THE NEED FOR RECORDABLE CONTRACTS REQUIRING THE SALE OF EXCESS LANDS. WE BELIEVE THAT THE FULL TEN YEARS SHOULD BE ALLOWED FOR SUCH SALES AS HAS BEEN ALLOWED IN THE PAST. THE ALLOWANCE OF 10 YEARS FOR DISPOSAL OF EXCESS LANDS UNDER RECORDABLE CONTRACT WAS THE STATED AND WELL DOCUMENTED POLICY OF THE BUREAU OF RECLAMATION WHEN OUR DISTRICT WAS FORMED AND WHEN WE ENTERED INTO OUR WATER SERVICE CONTRACTS. A DECREASE IN THE NUMBER OF YEARS ALLOWED FOR EXCESS LAND WOULD BE IN VIOLATION OF THE INTENT OF OUR CONTRACTS.

WE AGREE THAT, WHERE THE SECRETARY HAS WITHHELD THE PROCESSING OR APPROVAL OF THE DISPOSITION OF EXCESS LANDS, THE OWNER SHOULD BE GIVEN EXTRA TIME FOR THE SALE OF HIS EXCESS LANDS.

WE WOULD PREFER THAT THE PROVISIONS OF THE RECLAMATION LAW SHOULD APPLY ONLY TO THE FIRST SALE UNDER A RECORDABLE CONTRACT. THE IMPOSITION OF THE RULES TO A SECOND SALE WOULD ONLY AGGRAVATE THE RECORD KEEPING AND POLICING REQUIREMENTS FOR THE DISTRICTS AND FOR THE UNITED STATES. THE BENEFITS THAT WOULD ACCRUE BY CONTROLLING SECOND SALES DO NOT JUSTIFY THE APPLICATION OF RECLAMATION LAW TO SUCH SALES.

WE ARE IN FULL SUPPORT OF THE SECTION 104 OF THIS BILL, WHICH EXEMPTS THE CORP OF ENGINEERS PROJECTS.

WITH REGARD TO THE MAXIMUM LAND OWNERSHIP ACREAGE WHICH MAY BE OWNED AND/OR LEASED WITHIN TITLE II OF THIS BILL, LISTED BELOW ARE TABULATIONS OF OUR 1981 "DISTRICT FARMER LANDHOLDING OWNED AND OPERATED" AND "DISTRICT OWNERSHIP LEASED TO OTHERS"

DISTRICT FARMER LANDHOLDING OWNED AND OPERATED, IN IRRIGABLE ACRES

	160 or LESS	161 to 320	321 to 640	641 to 1280	1281 to 1600	1601 to 5120	TOTALS
TOTAL ACREAGE	4271	3530	4264	5986	2678	6826	27,555
% OF TOTAL DISTRICT	6.5%	6.8%	8.2%	11.5%	5.2%	13.2%	51.4%
			38.2%				
NO. OF FARMING UNITS	50	14	9	7	2	3	85
% OF TOTAL DISTRICT FARMED OR LEASED UNITS	36.5%	10.2%	6.6%	5.1%	1.4%	2.2%	62.0%

DISTRICT OWNERSHIP LEASED TO OTHERS, IN IRRIGABLE ACRES

	160 or LESS	161 to 320	321 to 640	641 to 1280	1281 to 1600	1601 to 5120	TOTALS
TOTAL ACREAGE	1679	2632	4968	7372	3765	4780	25,196
% OF DISTRICT ACREAGE	3.2%	5.1%	9.6%	14.2%	7.3%	9.2%	48.6%
			39.4%				
NO. OF LEASES	19	10	10	8	3	2	52
% OF TOTAL FARMED OR LEASED UNITS	13.9%	7.3%	7.3%	5.8%	2.2%	1.5%	38.0%

AS NOTED IN THE ABOVE TABLE ENTITLED "DISTRICT FARMER LANDHOLDING OWNED AND OPERATED" FARMING UNITS CONSISTING OF 38.2% OF OUR DISTRICT IRRIGABLE ACREAGE ARE OWNED AND OPERATED BY FARMERS HAVING OWNERSHIP SIZES OF UP TO 1,600 ACRES; AND, 13.2% OF OUR ACREAGE IS OWNED AND OPERATED BY FARMERS WITH FARMING UNIT SIZES OF GREATER THAN 1,600 ACRES.

AS SHOWN IN THE TABULATION ENTITLED "DISTRICT OWNERSHIP LEASED TO OTHERS" 39.4% OF OUR TOTAL ACREAGE IS LEASED BY CWNERS IN BLOCKS BELOW 1,600 ACRES AND 9.2% OF THE TOTAL DISTRICT ACREAGE IS IN EXCESS OF 1,600 ACRE BLOCKS LEASED TO OTHERS.

ALL OF THE OWNERS WITHIN OUR DISTRICT ARE IN FULL COMPLIANCE WITH THE EXISTING 1902 RECLAMATION LAW IN THAT NOT GREATER THAN 160 ACRES IS OWNED BY AN INDIVIDUAL, UNLESS RECORDABLE CONTRACTS HAVE BEEN EXECUTED. WE HAVE COMPLIED WITH THIS FIGURE ALTHOUGH WE BELIEVE THE 160 ACRES IS TOO SMALL, AND WE BELIEVE IT SHOULD BE INCREASED. THUS, WE ARE IN FULL SUPPORT

OF TITLE I OF SENATE BILL S-1867, WHICH PROVIDES THE OPTION FOR CONTINUING UNDER THE EXISTING LAW WITH UNRESTRICTED LEASING AND PRESENT WATER COSTS.

WE HAVE NO OBJECTION TO THE FIRST PART OF SECTION 203 OF TITLE II OF THIS LEGISLATION WHICH STATES THAT A LANDHOLDING OF NOT MORE THAN 1,600 ACRES MAY BE OWNED BY THE QUALIFIED RECIPIENT. IN FACT, THE LANDOWNERS WITHIN OUR DISTRICT WOULD BE SATISFIED WITH AN INDIVIDUAL LAND OWNERSHIP SIZE OF SOMEWHERE IN THE NEIGHBORHOOD OF 320 ACRES, OR MORE, WITH NO MAXIMUM FARM SIZE OR LEASING RESTRICTIONS.

WE STRONGLY OPPOSE ANY RESTRICTIONS ON LEASING WHICH LIMIT THE ECONOMICAL SIZE OF A FARMING UNIT. IF THERE IS A LEASING RESTRICTION WITHIN RECLAMATION LAW, IT WOULD BE ALMOST IMPOSSIBLE TO ADMINISTER OR CONTROL BY EITHER THE FEDERAL GOVERNMENT OR BY THE DISTRICT. THERE ARE AS MANY TYPES OF LEASING ARRANGEMENTS AS THERE ARE THOSE WHO LEASE AND SOME PROPERTIES ARE EVEN LEASED TWO OR THREE TIMES DURING THE SAME CROP YEAR. IT CERTAINLY WOULD NOT BE FAIR TO SADDLE THE DISTRICT WITH THE ADDITIONAL BURDEN AND RESPONSIBILITY OF ADMINISTERING LEASING PROVISIONS OF RECLAMATION LAW. CURRENTLY IT IS THE RESPONSIBILITY OF THE OWNERS WITHIN EACH DISTRICT TO BE RESPONSIBLE DIRECTLY TO THE UNITED STATES FOR THE PROVISIONS OF RECLAMATION LAW. OUR DISTRICT HAS APPROXIMATELY 350 SEPARATE PARCELS. AS SHOWN ON OUR PREVIOUS TABULATIONS, 48.6% OF OUR ACREAGE IS LEASED

TO OTHERS. MANY DISTRICTS UNDER RECLAMATION LAW HAVE THOUSANDS OF SEPARATE PARCELS. EVEN IF COUNTY RECORDING OF LEASES MAY BE REQUIRED BY LAW, WHO WOULD DO THE ACCOUNTING AND WHO WOULD PAY THE COSTS? THE OWNERS OF THEIR PROPERTY ARE THE CONTROLLERS OF THEIR LAND AND THE MAJOR BENEFICIARIES OF THEIR LANDS THAT THEY LEASE TO OTHERS. LEASING RESTRICTIONS WOULD CERTAINLY DIMINISH THE PROPERTY OWNERS CONTROL AND BENEFITS OF THEIR LAND UNDER RECLAMATION LAW.

ALTHOUGH WE OPPOSE LEASING RESTRICTIONS, WE REALIZE THAT IT IS PROBABLE THAT IN NEW LEGISLATION, THERE MAY BE A LIMIT ON TOTAL ACREAGE OF OWNERSHIP AND LEASING WITH PRESENT WATER COSTS. IF THIS IS THE CASE, THE 3,200 ACRES ALLOWED UNDER TITLE II OF THIS BILL IS ADEQUATE TO SATISFY THE MAJORITY OF THE OWNERSHIP WITHIN OUR DISTRICT. ASSUMING THE OWNERS WITHIN OUR DISTRICT HAVE THE OPTION OF CONTINUING UNDER TITLE I OF THIS BILL, OR CHANGING TO TITLE II AS PROPOSED, THIS BILL WOULD DEAL FAIRLY WITH THE LANDOWNERS AND FARMERS OF OUR DISTRICT.

WITH REGARD TO SECTION 203 (b) OF TITLE II OF THIS BILL, THE OPTIONAL EXPANDED OWNERSHIP, AND MORE PARTICULARLY, THE PAYING OF THE FULL COST FOR WATER FOR LEASED LANDS IN EXCESS OF 1,600 ACRES, WE CAN NOT COMMENT SPECIFICALLY AS WE DO NOT KNOW EXACTLY WHAT THIS FULL COST OF WATER WOULD BE TO THE OWNERS WITHIN OUR DISTRICT. THIS BILL STATES THAT THE FULL COST IS DEFINED AS THE CONSTRUCTION COSTS ALLOCABLE TO IRRIGATION PLUS ALL OPERATION AND MAINTENANCE DEFICIENCIES FUNDED WITH AN INTEREST APPLIED AT THE RATE APPLICABLE TO

15 YEAR UNITED STATES TREASURER OBLIGATIONS. CURRENTLY, WATER USERS WITHIN OUR DISTRICT ARE NOW PAYING WATER COSTS RANGING BETWEEN $21 PER ACRE FOOT AND $26 PER ACRE FOOT. IN ADDITION, ASSESSMENTS ARE BEING LEVIED TO THESE SAME LANDOWNERS AND/OR WATER USERS, WHICH CURRENTLY RANGE FROM $6 PER ACRE TO $11 PER ACRE. FUTURE ASSESSMENTS FOR MANY OF OUR DISTRICT LANDS WILL CLIMB TO $26 PER ACRE DURING THE YEAR 1986/87 AND CONTINUING UNTIL THE YEAR 2018. FARMING INCOME IN OUR DISTRICT HAS BEEN POOR THE LAST SEVERAL YEARS. WE HOPE IT WILL IMPROVE. HIGHER WATER COSTS WILL NOT HELP OUR SITUATION.

IF THE "FULL PRICE WATER" IS TOO HIGH FOR OUR FARMING OPERATIONS, IT COULD CURTAIL THE EXPANSION TO AN OPERATOR'S ECONOMICAL FARMING UNIT LEVEL. IN ADDITION, REDUCED PAYMENTS TO THE UNITED STATES MAY ALSO RESULT IN LOWER WATER PURCHASES AND IN LESS TAXES ON OPERATOR INCOME THAT WOULD HAVE OTHERWISE BEEN REVENUES TO THE UNITED STATES. THE MORE WATER WE SELL, THE CHEAPER IS THE OVERALL COST TO THE WATER USERS OF OUR DISTRICT.

THE PRODUCTIVITY OF CALIFORNIA AGRICULTURE IS DUE IN LARGE PART TO THE AVAILABILITY OF FEDERAL WATER. THIS HAS CONTRIBUTED GREATLY TO PROVIDING THE CITIZENS OF THE UNITED STATES RELATIVELY LOW COST AND ABUNDANT SUPPLIES OF FOOD. IT HAS ALSO IMPROVED OUR BALANCE OF PAYMENTS THROUGH THE EXPORTATION OF MANY OF OUR CROPS INCLUDING COTTON, GRAINS

AND PRODUCE. THE VISION IN CONCEIVING, PLANNING, CONSTRUCTING AND OPERATING THE CALIFORNIA WATER SYSTEM IS TO BE HIGHLY COMMENDED. THE BENEFITS OF THIS SYSTEM IN PROVIDING FOOD, FIBER, JOBS AND TAX REVENUES WILL CONTINUE AS LONG AS THE SYSTEM IS IN OPERATION.

IN CONCLUSION, WE EXPECT THE UNITED STATES TO LIVE UP TO ITS CONTRACTUAL AGREEMENTS NEGOTIATED AND APPROVED BY ALL PARTIES IN GOOD FAITH. WE OPPOSE UNNEEDED RESTRAINTS TO AGRICULTURE WITHIN THE UNITED STATES WHETHER THE FARMING IS WITHIN FEDERAL WATER SERVICE AREAS OR OTHERWISE. IT IS OUR HOPE THAT THE NEW LEGISLATION TO MODERNIZE THE 1902 RECLAMATION LAW WILL NOT RESTRICT CONTINUED PROGRESS IN FARM PRODUCTIVITY AND THAT ECONOMICS WILL DETERMINE THE PROPER FARM SIZE.

MY APPRECIATION TO YOU FOR ALLOWING MY TESTIMONY AT THIS HEARING.

The **Chairman**. Thank you. Mr. Sorensen.

STATEMENT OF JAMES F. SORENSEN, ON BEHALF OF THE FRIANT WATER USERS ASSOCIATION

Mr. **Sorensen**. Senator McClure, I am with the Friant Water Users Association which represents a great number of people on the east side of the San Joaquin Valley in California.

We would like to commend you and the other members of the committee for putting forth S. 1867. We are generally in support. We think the bill probably needs some fine tuning but initially I would note we have long felt that beneficial ownership was the key to the acreage limitation issue and so long as the lands were owned and eligible acreage, whatever the number established, that there should not be any restriction on leasing.

I would like to note that title I starts off in section 101 with the term "residency repeal." I would like to suggest "repeal" be taken out. There is a consensus I think that residency is not now properly applied.

I would note we would like to see some provision about commingling, where non-Federal water is applied and carried in federally financed or federally assisted facilities.

I would agree with an earlier witness that title I should be made available without contract amendment and further, I would note it appears to me title I and II with the option is going to create some administrative problems. I do not think there is anything that cannot be overcome. It is going to be a complication.

We have seen some of the Bureau's administrative operations as it is now with the existing acreage restriction. That would carry over into the matter of multidistrict application. This is very important to us.

We have many small districts that were formed at various stages of time for various reasons, earlier water needs, geographical problems. We now are abiding by what our contracts say and on a per-district basis.

I have attached to my statement a short paper I helped put together on some of the problems involved in the multidistrict issue.

The Chairman. It will be inserted with your full statement.

Mr. **Sorensen**. Thank you, Senator McClure.

In the last section, section 301, on leases, I would note that the requirement that the leases be written may cause some problems, whether it be administrative or personal.

Many leases are not written, they are handshake sort of things. At any rate they certainly should not be available to the general public because many times this is a rather competitive sort of thing.

Ten years is not long enough where some development leases are for permanent crops. In many cases citrus, nuts and some of the stone fruit are not even on a breakeven basis until about 10 years is up. It would seem there should be some provision for perennial crops that would be different from the annual crops.

I think that covers my main points. Thank you.

[The prepared statement of Mr. Sorensen follows:]

STATEMENT ON ACREAGE LIMITATIONS AND S. 1867
before the
Senate Energy and Natural Resources Committee
for the
Friant Water Users Association
Visalia, California
by
James F. Sorensen
Consulting Engineer
December 10, 1981
Washington, D. C.

Chairman McClure, I appreciate the opportunity to present this statement to the Committee on Energy and Natural Resources on behalf of the Friant Water Users Association which is composed of 26 public districts serving irrigation water to over one million acres on the east side of the San Joaquin Valley in California. Twenty-two of the districts have long-term water service contracts with the U. S. Bureau of Reclamation for service from the Friant Unit of the Federal Central Valley Project. Attachment A lists these long-term contractors. Most of these contracts were executed in the late 1940's or the early 1950's and water deliveries from the Friant Unit through the Madera Canal commenced in 1944 and from the Friant-Kern Canal in 1949.

At the time the water service contracts were signed, there was much controversy in the districts as to whether the acreage limitation provisions were acceptable, but a combination of a series of dry years and an inability to get Congressional or Administrative changes caused the contracts to be signed and ratified by district landowners or electors as provided by California law.

The Friant Water Users Association supports the concepts of S. 1867 and is happy to offer comments on some specific provisions. We are in general support of the comments of the Farm/Water Alliance.

The member districts of the Friant Water Users Association have abided by the Administrative rulings of the U. S. Department of the Interior, and there has been rigid enforcement from the original water delivery dates. Enforcement included actual field observations being carried out visually, as well as with instrumentation to determine the source of water being applied to various parcels of land. The pH meters can determine whether the water being applied is from the supplemental canal surface water or from natural underground supplies. This should indicate that contrary to the beliefs of some, acreage limitation has been enforced in our area.

In the operations of these districts, conjunctive use of surface and ground waters has been carried out since the water supplies to the districts have been identified as either Class 1 or Class 2 with the Class 1 water being approximately half of the average supply made available by the Friant Unit.

Friant Water Users Association has long supported modification of the acreage limitation provisions of the 1902 Reclamation Act, and could have operated satisfactorily even if basic acreage had been increased with unlimited leasing being allowed so long as the parcels were held in eligible beneficial ownerships and if residency requirements had been eliminated. Also, very important to several of the districts of the Friant Water Users Association is the elimination of acreage limitation on the operations of the Corps of Engineers flood control projects on the Kings, Kaweah, Tule, and Kern Rivers.

Many of these districts are located adjacent to each other and were organized at different times for different reasons such as unequal water conditions causing one area to organize earlier than another one which might be nearby. During this period of more than 30 years of operation of the two canals, stable land ownership patterns have developed with acreage limitations being applied on an individual district basis. In the Friant service area, there are instances of adjacent parcels being in separate water districts. Imposition of a west-wide total for eligibility would reverse Interior policy and local compliance, would create hardships in many cases, and would bring on an administrative nightmare. For more on this subject, please note Attachment "B" which I helped to prepare.

Quite likely the "biggest title company in the world" would have to be established since it is not uncommon that persons will own land either individually or as partners or as shareholders in several districts and this might be true even in several States. The administrative burdens on the Bureau of Reclamation, as well as on the contracting districts, will be staggering and expensive.

Provisions to recognize and allow comingling of Federal and non-Federal water supplies in Federally financed conveyance and distribution systems could be included so acreage restrictions do not apply to the non-Federal water supplies. Comingling is of beneral benefit.

There needs to be specific recognition in any new legislation to provide for the non-applicability of acreage limitation provisions where non-Federal water supplies are exchanged so original water right owners can operate without acreage limitation restrictions to the extent of their original water supplies.

The establishment of two classes of users each with a different water rate, as provided in Title I and Title II, will cause administrative problems. This situation would be even more complicated if an individual landowner was able to, without regard to the wishes of the district, go to the Bureau of Reclamation to make himself eligible for delivery to excess lands upon the payment of the "full cost." The individual landowner does not contract with the United States, but with the district in which his land is located, and that district has the water service contract with the United States. The district must be a party to such arrangements.

Friant Water Users Association is particularly interested in the application of SEC. 106 (d), which provides for the delivery of temporary water supplies to excess lands. This would allow the application of water to excess lands when those waters are not storable or are in effect flood flows which would otherwise be discharged to the Pacific Ocean. The delivery of such water to excess lands to reduce pumping can have a beneficial effect on the entire district involved since any cessation of pumping will cause a stabilizing of the ground water reservoir such that natural recharge will benefit all landowners whether small or large.

The "qualified recipient" provisions of Section 201 (b) should be revised to eliminate the numerical restriction on the number of beneficiaries.

Section 202 covering contract amendments should be changed to provide that the Secretary cannot force a non-Federal contractor to amend its contract to include other matters beyond those included in this legislation unless the non-Federal party wishes such amendments.

Section 203 (d) which would have the Secretary apply a duty of water to lands within a given district based on average duties of project water delivered the preceding 5 years appears to create an administrative burden. It would be more logical to apply the price to the water delivered to the particular parcel of land in a given year since there are many instances in which crops are rotated with resultant water need variation. In some cases, such as the Friant Unit, water deliveries vary widely from year to year.

Thank you.

FRIANT WATER USERS ASSOCIATION
WATER CONTRACT DATA
FRIANT UNIT, CVP

LONG-TERM CONTRACTOR DATA

AGRICULTURAL SUPPLY	No. of Landowners 1	Gross Acres 2	Irrigable Acres 3	Average Water Contract Entitlements Ac. Ft. Class 1 4	Ac. Ft. Class 2* 5
FRIANT-KERN CANAL					
Arvin-Edison W.S.D.	996	126,330	119,543	40,000	156,500
Delano-Earlimart I.D.	728	56,000	53,125	108,800	37,250
Exeter I.D.	330	14,638	12,990	11,500	9,500
Fresno I.D.	36,447	238,240	231,804	-0-	37,500
Garfield W.D.	42	1,771	1,730	3,500	-0-
International W.D.	6	736	718	1,200	-0-
Ivanhoe I.D.	280	10,861	10,314	7,700	3,950
Lewis Creek W.D.	30	1,239	1,200	1,450	-0-
Lindmore I.D.	665	27,256	26,422	33,000	11,000
Lindsay-Strathmore I.D.	581	15,430	14,051	30,000	-0-
Lower Tule River I.D.	812	103,086	93,236	61,200	119,000
Orange Cove I.D.	659	27,000	26,000	39,200	-0-
Porterville I.D.	249	17,107	15,781	16,000	15,000
Saucelito I.D.	201	19,339	18,628	21,200	16,400
Shafter-Wasco I.D.	339	37,728	35,137	50,000	19,800
So. San Joaquin M.U.D.	1,165	62,164	57,089	97,000	25,000
Stone Corral I.D.	223	6,252	6,116	10,000	-0-
Tea Pot Dome W.D.	77	2,813	2,813	7,500	-0-
Terra Bella I.D.	862	13,340	12,455	29,000	-0-
Tulare I.D.	984	79,950	68,579	30,000	70,500
Sub-Total: Friant-Kern Canal	45,676	861,280	807,731	598,250	521,400
MADERA CANAL					
Chowchilla W.D.	958	64,791	59,453	55,000	80,000
Madera I.D.	3,184	112,183	106,005	85,000	93,000
Sub-Total: Madera Canal	4,142	176,974	165,458	140,000	173,000
TOTAL AGRICULTURAL	49,818	1,038,254	973,189	738,250	694,400 af
MUNICIPAL AND INDUSTRIAL SUPPLY					
City of Fresno				60,000	
Fresno County Water Works District No. 18				150	
City of Orange Cove				1,400	
Madera County				200	
TOTAL MUNICIPAL AND INDUSTRIAL SUPPLY				61,750	
TOTALS				800,000 af	694,400 af*
TOTAL LONG-TERM AVERAGE SUPPLY: Friant-Kern and Madera Canals:					1,494,400 af

*Average Annual Class 2 supply is approximately 50% of maximum obligation.

APPLICATION OF ACREAGE LIMITATION ON RECLAMATION-WIDE BASIS

The Omnibus Adjustment Act of 1926 for the first time established the procedure for contracts between the federal government and water user organizations. Those contracts entered into since that time are the result of negotiations. Mutual commitments were made, based on assurances that each party to the contract would behave in certain ways. In California, these contracts are subject to approval by the voters, by state agencies, and by the courts. Most of the contracts define excess lands as land in excess of 160 acres in a single ownership within an irrigation district.

The contracts provide that the districts shall not deliver project water to irrigable land within the district in amounts in excess of the 160 acres. The district can control water deliveries within its own boundaries, but it has no information on the ownership of land outside its own boundaries. It has no way of knowing, for instance, whether one of its landowners has purchased additional land in another project in another state and is thus in violation of a reclamation-wide limitation. If a farmer were to be found in violation, which district has the obligation to shut off water deliveries to land owned by the offending landowner? How much expense should a district be put to to discover land ownership in other districts in other states?

Multi-district ownership is of serious concern in both the San Joaquin and Sacramento Valleys of California. As reclamation project units were developed, many small water and irrigation districts were formed throughout the valleys. Numerous individuals own land in several districts throughout the valleys.

The multi-district problem is further compounded by two other proposals.

The first of these is the change from an individual entitlement to a farming unit entitlement. An increase from 160 acres per individual per district to 320 acres per individual per district sounds rather modest, but an increase from 160 acres per individual per district to 1280 acres or 960 acres per district sounds enormous. (The fact that the entitlement is per farming unit in the latter case is lost sight of.)

But by far the most troublesome of the other concepts complicating the multi-district problem is the proposal that leasing also should be limited. If it would require "the world's largest title company" to enforce ownership limitations reclamation-wide, it would take a Big Brother system of Orwellian proportions to enforce leasing limitations reclamation-wide. Ownership records are public records. Leases for the most part are not. Many times they are leased for very short periods of time and are entered into on the basis of a hand-shake. Some land can be leased to different tenants two and three times during a 12-month period. How can a farmer possibly know what other land in what other project his tenant may be leasing?

The multi-district problem poses serious difficulties for mortgage lenders, who have no way of knowing when the value of their security property may be jeopardized because a borrower purchased or leased additional land in some distant place.

The ability to farm in several districts is an important element in the farmer's ability to hedge crop, weather and market risks, particularly if he is growing high-risk perishable commodities such as lettuce.

The combined effect of (a) the change to a farming unit entitlement; (b) the imposition of limitations on leasing; and (c) the imposition of limitations reclamation-wide could result in lands becoming excess in quantities not heretofore expected. In some small districts, lands excluded from service could impair a district's repayment ability. In other districts a farmer newly in excess status may choose to irrigate by pumping rather than take surface water, thus disrupting efforts to achieve balance between underground and surface supplies.

Finally, it would appear that the only justification for such a radical change in the way acreage limitations are imposed would be to correct some serious abuse. The record would appear to be devoid of any evidence that such abuses have occurred.

The **Chairman**. Thank you very much.

Mr. Stamm, who is my old friend.

STATEMENT OF GILBERT G. STAMM, ON BEHALF OF THE SAN LUIS & DELTA-MENDOTA WATER USERS ASSOCIATION

Mr. **Stamm**. It is a pleasure to be here. I am not sure whether it is good or bad to be last. Somebody has to be. It might be easy to say amen to all the advantages of the reclamation program and the benefits.

As you know I have been a loyal supporter for a long time.

I am here on behalf of 35 water districts on the west side of the San Joaquin Valley in California. They embody over 1 million acres of land and they all have contracts with the Secretary; some for a water supply from the Federal project, some for exchange contracts or water rights settlement contracts or both.

I have a statement which you have already inserted into the record.

Starting with section 2(b), we believe there is need and opportunity for refinement of the definition of irrigation water. The reason would be to clarify that it relates only to water to which the Federal project is entitled under its valid State water right filings.

The water supply to which the projects are entitled do come under State water right filings and they vary from State to State and they sometimes vary even from project to project.

I think clarification needs to be made.

In addition, the holders of the water right settlement contracts or exchange contracts would urge that the period be dropped and words be added, "to exclude project water that is supplied in exchange for nonproject water to which a district was entitled under State law independent of the Federal project."

That exchange is not necessarily supported by statute so this would be helpful.

I certainly agree with all the comments with respect to repeal of any lingering statutory residency requirements.

We agree with class I equivalency. I noticed the Secretary has some objections to class I equivalency on the basis of the administrative problems and costs which may be involved and time involved.

I think in all fairness it would be honest to recognize that the larger the limit on the acreage limitation, the less need there is for class I equivalency. They are more or less inversely proportional.

The **Chairman**. If I may interject, you were in that place at one time trying to find out what class I equivalency is. You did manage to do it, did you not?

Mr. **Stamm**. We got that in the authorization of a number of projects, sir.

The **Chairman**. You were able to apply it?

Mr. **Stamm**. Yes. It is possible.

We are in agreement. It was extremely important when the acreage limit was 160 and it becomes less important, is what I am saying, the farther you go upward in the limit.

The provisions for recordable contracts as contained in section 103(a) need some clarification. It has been covered by proposed amendments which have already been given to you.

Relief from acreage limitation after full payout in the bill as drafted leaves some question as to the intent, as to whether an individual under a district contract can pay out. I assume that will be clarified in the final draft.

Validation. We agree there have been commitments made that need to be validated by one means or another. I know of one in addition to those covered in the draft that I think ought to be covered also and that has to do with a secretarial-authorized and even encouraged expansion of the water service area. The people depended upon it and took advantage of it and it then came in to question subsequently by a new solicitor and I think that should be clarified.

Reaffirming section 110, reaffirming statutory exemptions, I certainly agree with that.

On title II, section 201, the definition of landholding is opposed by the association, simply because it includes leased land.

We believe the basis for obtaining wide distribution of subsidized project benefits can be and should be obtained through rigid enforcement of bona fide beneficial landownership and there are several reasons and justification for that position which are included in our written statement.

Basically we think all landowners should be required to conform and we think they should not be penalized by reason of their nonexcess land becoming excess land under a lease arrangement. It is the lessor that is hurt.

In the case of retired farmers, widows who are depending upon the revenues and income from their property for their livelihood, if their land becomes excess in an operating unit, even though it is nonexcess in the ownership and there is therefore full cost required including a high interest rate, it is the lessor that is hurt because the lessee simply pays a lower lease rate for that piece of land.

This is something to take into consideration I think when you are deciding whether to have a high limit and a high interest rate for going above it or a low limit and a low interest rate.

The CHAIRMAN. Are you suggesting there be no limit on leasing under title II?

Mr. STAMM. That would be the first choice of the group I am representing, that there be no limit on leasing.

With a high limit, the higher the limit, the greater opportunity to lease lands to people in operating units in which they would not become excess. There is a trade off.

This is one point that I think has not been brought out before, that it is really the lessor that is hurt. That ought to be considered in your final markup.

It has been said many times that the 160 was arbitrary and anything you pick is arbitrary. I certainly agree. We tried many times in the past to agree on a figure and were never able to do it.

I think the Secretary, and this gets partly into title III, even if there were no limit on leasing, the Secretary would need to have access and perhaps on a confidential basis to leases in order to properly administer the ownership limitations.

We believe leases should not carry the essence of ownership and this could happen and has happened in the past.

The CHAIRMAN. Under the provisions of the bill, the Secretary is going to have that problem with respect to the title I option as well because it is required in the bill to be arm's length transactions. Somebody has to make a determination of whether or not they are.

Mr. STAMM. That is correct. He has had in the past under the old law to examine the leases to determine whether the benefits of ownership really remain with the owner or whether there is an essence of ownership in the lease arrangement.

The CHAIRMAN. That is a case under present law. It would be the case under title I as well as under title II.

Mr. STAMM. Yes, you are correct.

I think that is all I have to offer. Thank you.

[The prepared statement of Mr. Stamm follows:]

Statement of Gilbert G. Stamm, witness for the San Luis and Delta-Mendota Water Users Association, San Joaquin Valley, California, before the Senate Subcommittee on Water and Power on S. 1867, a bill to amend and supplement the acreage limitation and residency provisions of Federal reclamation law, as amended and supplemented, and for other purposes.

Mr. Chairman, and members of the subcommittee, I appreciate the opportunity to testify before you with respect to S. 1867. Many of the provisions therein treat with issues that have long been of concern to Federal project water users.

I am appearing here in behalf of the San Luis and Delta-Mendota Water Users Association which is composed of about 35 irrigation and water districts on the west side of the San Joaquin Valley in California, all of which have contracts with the Secretary providing for project water supplies, or for water right settlements, or for both.

Philosophically, we are in agreement with most of the objectives of S. 1867. However, we do have some concern with the definition of "irrigation water," with unclear intent of several key provisions of the bill, and especially with the Title II treatment of leased lands in determining a "landholding."

"Irrigation water" as defined in section 2 (b) introduces what appears to be restrictive language that could conflict factually with prevailing Federal project water supplies. Irrigation water available for marketing by contract from Federal reclamation projects depends primarily on water right filings under State law, and management of those rights pursuant to the authorized multiple purposes of reclamation projects in a manner that will maximize benefits, making full permissible use of the physical project facilities involved. It would seem preferable to define "irrigation water" simply as: "Federal reclamation project water made available to a district for agricultural purposes pursuant to a contract with the Secretary."

Because of language appearing later in S. 1867, the holders of water right settlement or "exchange" contracts with the Secretary would suggest that the "irrigation water" definition be expanded by striking the period and adding the words: "exclusive, however, of project water supplied in exchange for non-project water to which a district was entitled under State law independent of the Federal project."

Section 101, which repeals any statutory residency requirement as a condition precedent to delivery of irrigation water, is strongly endorsed.

The Class I equivalency concept as provided in section 102 of S. 1867 is likewise endorsed. However, the bill is silent as to how implementation is to be financed and the extent to which the costs involved are to be reimbursable.

Section 103 (a), dealing with recordable contracts, is not clear as to establishment of effective dates for its application to future projects. The first sentence, paraphrased in part, states that irrigation water from reclamation project facilities "constructed" after the enactment of this Act may not be delivered to excess lands until recordable contracts are executed. Use of the word "constructed" is not sufficiently definitive because "constructed" can be related to first appropriations for construction, first contracts for construction, substantial completion of construction (when water can first be delivered), or final completion. There can be a long gap even between substantial and final completion. The objective could be accomplished simply by deleting all of the words in the first sentence between "Irrigation water" in line 15, page 3, and "may not be delivered" in line 17, page 3.

Section 105, which excludes leased land from the acreage limitations of law, as has been the case since inception of the reclamation program in 1902, is supported.

Section 106 (a), providing relief from acreage limitations upon full payout of prevailing construction cost obligations, is likewise supported; however, upon careful reading it is not clear whether it is intended that an individual landowner under a district repayment contract could payout his share of the district's repayment obligation and be relieved of the acreage limitation. Fundamentally we agree that appropriate acreage limitations are justified whenever a Federal financial subsidy accrues to the benefit of a landowner, and conversely, when there is no subsidy by reason of landowners paying full cost including interest, acreage limitations should not apply.

Section 108 provides procedures for obtaining Congressional validation of contract provisions. Section 8 (a) may not be clear that requests for validation must come from a party or parties to the district contract involved. Clarification could be made by striking "non-Federal" and substituting "contracting entity or" . . . .

Section 108 (b) is supported as far as it goes, but should be expanded, we believe, to encompass other written Secretarial commitments such as those pertaining to authorized water service areas.

Section 110 (a) reaffirming existing statutory exemptions from the acreage limitation of law is fully endorsed. However, the provision may not protect the holders of water right settlement or exchange constracts which are not supported by statute, unless the definition of "irrigation water" is expanded as suggested earlier.

Section 110 (b) and (e) would provide for implementation of the Act and authorize appropriations as necessary to carry out its provisions, but, again, the Act is silent on the extent of reimbursability intended and the method of financing. The need for clarification is important, particularly in regard to section 102.

Title II, section 201 (c) introduces a restriction on land leasing in the definition of the term "landholding" which is strongly opposed by the association for several reasons.

Bona fide beneficial ownership of irrigation project lands, we believe, should be the primary basis for controlling the equitable distribution of subsidized benefits from Federal water projects. Excess land ownerships, by whatever definition or limitation finally adopted by law, should be broken up as necessary to conform to the law, including the use of recordable contracts for orderly disposition, and thus become eligible to receive project water as non-excess landownerships. If excess landowners do not dispose of their excess lands or execute recordable contracts agreeing to do so, they not only will be ineligible to receive project water but nevertheless will be subject to annual water assessments by the districts. Therefore, such landowners will not share in benefits but will be obligated for costs. Thus there is significant inducement for excess landowners to conform their lands.

Those excess landowners who do conform to the requirements of law should, we believe, be allowed under the law to select the means by which they will obtain the project benefits to which their lands have become eligible. One means, of course, is to farm the land themselves which involves a high capital investment, substantial risk of profit, and generally speaking a lower percentage of return on investment than most other industries and businesses. An optional course is to rent or lease their conformed non-excess lands under terms which will provide commensurate returns.

Including leased land in the definition of a "landholding" could restrict leasing opportunities and adversely affect lease terms, and thus penalize owners of conformed land who choose to lease rather than farm their lands.

Under rigid beneficial ownership criteria the basic objective of distributing widely the benefits of Federal water projects can be accomplished without subjecting conformed lands to further Federal control in use and management and perhaps to loss or reduction of benefits to those who must, or who choose, to lease. Beyond this, administration of the leasing controls would be cumbersome at best, and might well become so involved that effective and equitable enforcement would become unworkable from a practical viewpoint.

Landownership is a matter of official record in county and district offices as a basis, among other things, of levying taxes and collecting assessments. Acreage limitation laws related to ownership can be effectively and fairly administered, with some extraordinary effort and additional cost. Extraordinary efforts and costs involved are attributable primarily to violators and therefore imposition of effective penalties is justified.

Leases, however, are not a matter of official record and may follow a wide variety of forms. In many cases leases may shift and subleases be entered into all within a crop year. Also, under present practices, many leases are oral. Therefore the job of determining compliance with the leasing provisions of the Act, including the finding and penalizing of violators, becomes much more difficult and costly, if not impossible. Strawmen and loopholes could be anticipated with abundance.

In summary, we believe the control mechanism for assuring wide distribution of project benefits should be related to bona fide beneficial landownership alone.

The definition of "full cost" appearing in section 201 (d) carries the apparent intent that interest to be charged will be at current rates, pursuant to the specified formula. Under the language of the bill, applicable interest rates could be substantially higher or lower than those that prevailed at the time or times that construction funds were appropriated.

We believe it would be more equitable to establish interest rates that correlate more closely with money costs at the time of government funding.

Section 203 provides that both leased and owned lands shall be considered in the determination of "landholdings" and whether a landholding includes excess lands which may receive irrigation water by paying full cost. As already expressed, we believe that "landholdings" should be defined in terms of strict beneficial landownership only, and that limits on leasing should be omitted. However, we agree that any landholding so defined should represent the limit of non-excess land in any ownership entitled to receive irrigation water, and further that any excess land in any ownership, as a prerequisite to delivery of irrigation water, should be required to pay "full costs," as defined, or be covered by one or more valid recordable contracts for proper disposition of excess lands.

One of the original purposes of Federal involvement in western water supply programs was to encourage settlement and development of the West by financing projects that could not be undertaken otherwise. A tract of 160 acres of fertile land, with an adequate water supply, farmed by the labor-intensive methods that prevailed in 1902, was sufficient to occupy fully the efforts of its owner, although not always profitably.

As recognized by the Class I equivalency concept of this bill, not all irrigable lands are equally productive of net income due to numerous differences in physical and climatic factors. Farm management capabilities also vary widely among individual operators on both large and small farms. Technology has made greater advances in the past half century than in the entire previous life of our country. Mechanization and automation have greatly reduced labor requirements in virtually all aspects of commercial agriculture. Farm machinery required today is costly and cannot be successfully amortized unless it can be utilized economically.

For these reasons, the 160-acre limit under present law on the eligibility of private land held by "any one owner" to receive project water is outmoded. Also, for these same reasons, any enlargement of that figure is bound to be arbitrary to a significant extent. The numerous variables that exist within and among projects with respect to farm production, marketing, and management are so complex and interwoven that no single acreage figure can be right for all farms and farmers even in a single project area.

The best that can be hoped for is good judgment in establishing acreage limitations on non-excess lands that will be reasonably adequate in the predominant combination of variables faced by farmers now and in the foreseeable future.

Final judgment in this regard must come from the Congress. In order for the Title II acreage limit to be at least comparable to existing law, which permits water delivery to 160 acres of irrigable land in the ownership of "any one owner," and based on an average farm family of 4.5 members, the allowable non-excess landownership figure of Title II would need to be a minimum of 720 acres with no limit on bona fide leasing. We believe that a justifiable Title II limit, under todays farming methods and contraints, should exceed that figure. The 1,600-acre limit on non-excess owned land currently in S. 1867 can be supported if leasing limitations are removed as recommended herein.

With regard to leasing, we agree that any acceptable lease should not infringe on the pertinent prerogatives and rights inherent in landownership. In order to facilitate administration of acreage limits on owned land as proposed herein, the Secretary should have ready access, on a confidential basis, to lease agreements.

We urge that the subcommittee take these comments into consideration in final markup of S. 1867.

The CHAIRMAN. Thank you very much. We appreciate your testimony.

Ralph Nissen.

STATEMENT OF RALPH A. NISSEN, PRESIDENT, CENTRAL VALLEY PROJECT WATER USERS ASSOCIATION

Mr. NISSEN. I am Ralph Nissen, president of the Central Valley Project Water Users Association. This is a group of Central Valley project contractors representing over 1,800,000 acres. Practically everybody who has spoken here today that are Federal contractors are members within our organization.

I think we have had ample demonstration of the unity of feeling there is among the Federal contractors. We certainly appreciate the pleasant surprise we had this year when your bill appeared and suddenly we feel we have an answer and a chance to get out of the fog and get this out in the open where maybe we can have a permanent program.

We appreciate your efforts on this very sincerely, Senator McClure.

I am also here as president of the Glenn-Colusa Irrigation District which is a major irrigation district in the Sacramento Valley.

We are a district that has Federal water rights dating back to 1873. You can see that we have been around a fair time.

We are one of the districts that Mr. Sorensen was referring to on the commingling problem. We were diverters on the Sacramento River long before the Federal Government decided to build Shasta Dam. When Shasta Dam was built, we became part of the facility.

Shasta Dam was completed in 1945 and it was 1964 before we finally had a contract. We were the first of the Sacramento Valley diverters that signed a contract with the Federal Government.

Our relationship has been excellent in our case with the Bureau. We hope it will continue the same way. We hope whatever provisions are made for the commingling will take care of the possibility of this problem.

I would like to reemphasize one point that a number of the other speakers have presented and that is on leasing restrictions. We think the less restrictions there are the better for us to operate under and we also express some concern about the management of leasing operations.

With that, I think I certainly want in closing to again thank you very sincerely and I think the fact that you have done the job in slightly over half a day where it took 2 days over at the House side, I think that demonstrates your efficiency, sir.

The CHAIRMAN. I hope it may also demonstrate perhaps a growing feeling among members of this committee that a solution is at hand and it is time for us to reach it.

I am going to read it that way for today and we will find out later if that is true.

Mr. NISSEN. Thank you.

[The prepared statement of Mr. Nissen follows:]

Testimony of Ralph A. Nissen, President of the Central Valley Project Water Association before the Senate Committee on Energy and Natural Resources on S.1867, concerning acreage limitation and the Reclamation Act of 1902

Mr. Chairman, it is an honor to appear before this Committee on behalf of the Central Valley Project Water Association of California. Our Association represents 51 contractors receiving water from the Bureau of Reclamation's Central Valley Project. The combined agricultural acreage represented by the Association comprises a total of 1,800,000 acres and the water under contract from the Bureau of Reclamation totals 5,000,000 acre feet annually. Our Association is well aware of the tremendous value of the Central Valley Project to California and the Nation. We believe that the principles set forth in Resolution 81-12 of the National Water Resources Association and approved by many water organizations are desireable guides for amending the Reclamation Act of 1902, and it is our expectation that their inclusion in the proposed legislation will be beneficial to agriculture in California and to our country as a whole. As you are well aware the current law does not reflect either modern farming practices or the best use of agricultural land. Environmentalists in particular are recommending that concentration of population occur on less productive agricultural land or on land unsuitable for agriculture. We also feel that the proposed changes in Reclamation Law will make water conservation efforts more effective and will lead to greater irrigation efficiency and to an agriculture more responsive to changing consumer desires.

In addition, we believe that those who make interim use of Reclamation water supplies, that have been set aside for the future use of present contractors, should pay the full cost of making those supplies avilable. However, the excess land law should not apply since the other costs of using this temporary water may be high.

It has been a pleasure to appear before this committee and to represent the Central Valley Project Water Association in this important matter.
Does the Committee have any questions ?

Thank you

The CHAIRMAN. Mr. Enos.

STATEMENT OF FRANK ENOS, JR., PRESIDENT, TEHAMA-COLUSA WATER USERS ASSOCIATION

Mr. ENOS. Thank you, Mr. Chairman.

I intend my comments to be brief as being the last speaker for the day.

My name is Frank Enos, Jr. I am president of the Tehama-Colusa Water Users Association. I am also a farmer.

Our association represents 15 member districts and a service area of approximately 200,000 acres. We represent primarily the smaller sized farmers in the Central Valley project in California.

We fully support the recommendations you have proposed in S. 1867. We believe it gives all landowners, large and small, a flexibility that we need in order to make reclamation law work today to deal with the economic trends that are forever changing in farming.

The entitlement amount that is set forth in the bill does resolve most all of the excess land problems in our service area.

We are certainly supportive of the district by district application of the law in order to alleviate the so-called multidistrict problem we have in our service area.

We certainly support the residency repeal.

We commend you for your efforts in proposing and moving this legislation along and we appreciate your attention here today. Thank you.

[The prepared statement of Mr. Enos follows:]

TEHAMA-COLUSA WATER USERS ASSOCIATION
Representing Districts on the Tehama-Colusa and Corning Canals
Post Office Box 1054, Airport Road
Willows, CA 95988 [916] 934-5476

STATEMENT BEFORE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

By Frank Enos, Jr., President
Tehama-Colusa Water Users Association

Honorable Senator James A. McClure, Chairman

My name is Frank Enos, Jr., President of the Tehama-Colusa Water Users Association. Our association member districts are located in the Sacramento Valley of Northern California. We are water contractors with the Bureau of Reclamation in the Central Valley Project, California.

SUMMARY

Our association represents a service area of approximately 200,000 acres. Farms in the Tehama-Colusa service area range in size from 20 acres to 2,000 acres. We fully support the recommendations for amending the 1902 Reclamation Act as set forth in Senate Bill 1867. We believe the proposals contained in S-1867 allows a viable alternative by which a landowner can choose the economic level of his farming operation. The entitlement acreage amount as contained in S-1867 clearly resolves most all excess land acreage in the Tehama-Colusa service area.

I have additional prepared comments for inclusion into the record. It is certainly an honor to appear before this committee. Should you have any questions, I would be most willing to try and answer them.

The court has ordered the Department of Interior to review and propose new regulations on excess lands. We strongly feel the law should be modified through congressional action to meet current economic conditions. Recent reclamation law interpretations of the 1970's have caused considerable confusion and unwarranted doubt in the administration of the 1902 laws.

Accordingly, we support the principles contained in S-1867 because it offers all landowners a clear choice, large and small an opportunity to participate equitably in the reclamation program. There is sufficient flexibility in S-1867 to fit varied service area differences and still retain the intent and purpose of reclamation law as originally envisioned by the Congress in 1902. We believe S-1867 modernizes the original act to the economic realities of today.

Entitlement Amount

The entitlement acreage amount as contained in S-1867 clearly resolves most of the excess land acreage in the Tehama-Colusa service area. Genuine economic hardships have occurred in the past through no fault of the landowner because of the uncertainties that currently exist in land transfer policies and excess land sales reviews. This legislation gives clear direction as to the future growth potential for the individual landowner.

Leasing

The leasing provision allowance in S-1867 would provide for a realistic trend occurring in the Tehama-Colusa service area. As the cost of farm equipment and other capital items continue to increase, leasing of farmland to provide greater operational efficiencies become apparent. Upon reaching a favorable economic point within the proposed eligibility and leasing requirements the landowner-operator clearly has a choice. He can choose to either continue expanding his operation and pay the full cost of water in the reclamation project or maintain an operational level within the entitlement provisions that is the most economically suitable. We strongly believe in these principles as recommended by the Farm-Water Alliance and Association of California Water Agencies.

Multi-District

The multi-district issue as it affects the Tehama-Colusa service area is directly related to the entitlement acreage allowance. In our view S-1867 provides for sufficient acreage whereby the multi-district ownership of most landowners would not be affected. We still contend however, the multi-district ownership issue should not be an issue at all. There is no evidence of smaller districts ever being formed to circumvent the original ownership entitlement of 160 acres within the Tehama-Colusa service area.

In conclusion, we take strong exception to the comments of former Secretary of Interior Andrus at the time he proposed sweeping changes in Reclamation Law to as he said "to aid and benefit the small farmer". As a small farmer myself, and as a representative of many in the Tehama-Colusa service area, I can assure the so-called "aid and benefit" as proposed in previous efforts to modify the reclamation law we can well do without.

The **Chairman**. Thank you very much.

That concludes our list of witnesses. I have no questions for this panel. I welcome some who are old friends and who have been here many times before.

We hope that the next time you appear before us will be in testimony on some other piece of legislation.

Mr. **Sorensen**. An appropriation matter.

The **Chairman**. We would like that to happen as well. We look forward to the time it will.

Thank you very much. This concludes the hearing today.

[Whereupon, at 1:55 p.m., the committee was adjourned.]

RECLAMATION REFORM ACT OF 1981

MONDAY, JANUARY 11, 1982

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Boise, Idaho.

The committee met, pursuant to notice, at 9:05 a.m., in the Boise City Hall Council Chambers, Hon. James A. McClure, chairman, presiding.

Present: Senator McClure.

Also present: Russell R. Brown, professional staff member; and D. Michael Harvey, chief counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. The hearing will come to order.

This is the first official committee hearing I have held here in Idaho as chairman of the Committee on Energy and Natural Resources of the U.S. Senate. I am particularly pleased that the subject of this hearing is a matter on which I feel very strongly, and I know is of great importance to the people of Idaho as well.

It has been 4 years since then Interior Secretary Andrus set off cries of outrage from farmers all over the West with the publication of wide-ranging regulations covering Bureau of Reclamation projects; regulations, which in my judgment, went far beyond what was required by the court order to enforce the 1902 act under which he acted.

While shocking to irrigated agriculture in the 17 Western States, his actions did make clear that the 1902 Reclamation Act, based as it was on an ownership limitation of 160 acres, is in need of updating.

During the 96th Congress, the Senate passed S. 14 which was a sound effort to address a situation most notable for its complexity because of the variety of circumstances which exist regarding it.

Unfortunately, the special political problems which exist in the House of Representatives regarding this issue prevented that body's taking up a reclamation bill prior to adjournment. Budget and economic questions have preoccupied the first session of the current Congress, and I think quite properly.

I think, though, that despite the time which has passed and the anxiety that has been caused by that passage of time, we are in a position to pass a better bill now.

On November 18, I was joined by Senators Symms, Abdnor, Domenici, Goldwater, Hatch, Hayakawa, Laxalt, Wallop, and the ranking minority member of my committee, Senator Jackson, in introducing S. 1867. Since then, Senators DeConcini and Armstrong have also joined as sponsors of this bill.

This is a new bill which, while incorporating many of the same ideas included in the bill passed earlier by the Senate, includes new concepts which will serve to increase the flexibility farmers may have in deciding how to manage their own operations.

As you know, I have held hearings on the bill in Washington, D.C., in early December, during which the committee heard from the administration, as well as interested witnesses from throughout the West. I was glad to have Sherl Chapman, Mark Moorman, and Oscar Field there from Idaho. I know they'll agree it's a long ways from Idaho to Washington, especially at this time of year.

But, I have been very anxious to know what the people I represent most directly are thinking about the bill and about the future of the reclamation program in general. That is why I have scheduled this hearing here at home, and I do appreciate your willingness of all of you who are here and are on the witness list who will testify today to help me with my job in trying to pass good legislation, and we do have a good list of Idaho witnesses.

Before we proceed, though, I want to point out that the problems surrounding the status of the reclamation law and the many different circumstances which make the subject so complex exist throughout the West, and not just in Idaho.

The bill I introduced is, accordingly, broader than it would have needed to be to solve the Idaho problems alone. We have tried carefully to address those problems of particular importance to Idaho, such as the question of validation of Bureau of Reclamation contracts and residency, but I don't doubt for a minute that there may be things we have failed to consider and that there is probably room for improvement when the bill is marked up.

Questions of leasing continue to be controversial, but I feel a structure to allow for leasing is necessary. In today's market, oftentimes the only way a young farmer can start out is to lease ground.

By introducing S. 1867, it was my intention to provide a sound and acceptable basis for moving ahead to revitalize and modernize a program whose laws have become in many respects unworkable, unrealistic, and arbitrary due to changed economic, agricultural, and social conditions. I believe this bill encompasses a reasonable, workable, and constructive approach to a very complex problem which must be solved.

Much of our economy and quality of life can be attributed to the 1902 Reclamation Act and its success in literally making the drylands of the West bloom.

Forty-four percent of Idaho's irrigated farmland is on reclamation projects, and 85 percent of its agricultural returns are from irrigated land. One-third or more of Idaho's people receive benefits from these projects.

It has been estimated that over $54 billion in economic benefits have been gained nationwide as a result of our investment in reclamation projects. Rather than merely consuming resources like so many other Federal programs, these projects produce continuing wealth for our Nation.

That is why I continue to support the reclamation program which, along with personal initiative, hard work, and free enterprise, has helped to build our State and the West. That's why passage of this legislation this year is so important.

The hearing record will be kept open for 2 weeks so that those of you who wish to submit additional materials may do so. You may send them to my office here in Boise, or to the Senate Energy and Natural Resources Committee, room 3104, Dirksen Senate Office Building, Washington, D.C., and that ZIP code is 20510. I will make sure that your comments are then included in the record.

For those of you who wish to receive a copy of the record when it is printed, there are address labels on the table at the back of the room. Please fill them out and leave them there. The staff will collect them after the hearing.

There are also available a limited number of copies of the bill on the table. If we run out and you want one, call my office here in Boise or let the staff know here after the hearing or during the hearing today.

I would also like to extend my personal appreciation and that of the committee to Mayor Richard Eardley here in Boise for his help in obtaining the use of the council chamber for the hearing this morning. It is a fine facility and I was glad to have Dick's help.

With that, we will turn to the opening witness who is representing the junior Senator from Idaho, Senator Steven Symms, Mr. Bill Fay.

Before Bill commences, I might mention to all of the witnesses who are in the room and who will be testifying today, the entire statement will be made a part of the record. Whether you deliver or summarize, they will all appear in the record as submitted to us.

I would invite witnesses who feel they could so summarize or hit the highlights. I think now at latest count, 39 witnesses are here today.

Bill?

STATEMENT OF HON. STEVEN D. SYMMS, A U.S. SENATOR FROM THE STATE OF IDAHO AS PRESENTED BY WILLIAM FAY

Mr. Fay. Mr. Chairman, I appreciate your courtesy in allowing me to appear before this committee hearing to submit the statement which Senator Symms would like to have included in the hearing record.

The Chairman. It will be included in full.

Mr. Fay. The Senator's statement follows:

Mr. Chairman, I welcome this opportunity to again address the critical need to change the outmoded and archaic provisions of the 1902 Reclamation Act.

As you know, the initial purpose of this law, which was closely related to the earlier Homestead and Desert Land Entry Acts, was to establish a program for the construction of water resource projects to encourage the development of the arid lands of the Western United States. It has evolved into a major water resource development program in the West, involving river basins with multipurpose projects providing hydroelectric power, municipal and industrial water supply, flood control and public recreation, in addition to irrigation.

The gross value of crops produced from reclamation farms approaches somewhere along the line of $5 billion with aggregate economic benefits to the Nation of over $50 billion, as you mentioned earlier.

As I mentioned earlier, however, the act has simply not been changed to meet the times and the advent of innovative agricultural technology. Instead, it has been largely ignored over the years as the Federal Government and landowners receiving reclamation water have entered into good faith contracts with little recognition of the consequences of their actions.

The reason we have this critical problem is the frightful failure of Congress to oversee this act over the past few years. This problem is exacerbated by a handful of northern tier Congressmen and Senators who seek to make scapegoats of reclamation farmers in an effort to redefine the reclamation law in social terms. The victims are the bona fide family farmers, who, in simply trying to make a living were lulled into a false sense of security because Congress chose to ignore, rather than correct the act's deficiencies.

There is a growing need for expeditious congressional action, Mr. Chairman, a need which you have fully recognized and fully appreciate. We are sitting on a regulatory time bomb which is ticking away in the Western United States.

The bomb was set on August 25, 1977, when Secretary of Interior Andrus, in response to a Federal district court order, published proposed rules and regulations governing the then Water and Power Resources Service's administration of the acreage limitation provisions of the 1902 act.

The regulations represented a radical departure from the administration of the act, or the previous admininstration of the act, and they were met with furor and intense opposition by western Senators and Congressmen, including myself.

Without going into great detail on those regulations, let me say that they would cause economic havoc among the good faith landowners in Idaho and other States served by reclamation projects. They would require Idahoans to sell all lands in excess of 160 acres per individual or stop receiving reclamation water to irrigate their crops. These sales would have to be made without consideration of the value of the water which made them productive.

Secretary Andrus' regulations would force farm families to pack up and move out of their homes if they happened to live 51 or more miles away from their farms, or again face the loss of their water.

What Secretary Andrus seemed to imply was that the national interest was better served by crops grown within a 50 mile radius of the farmer's home than it is by crops grown 51 miles from a farmer's home. There are similar, equally devastating problems regarding leasing, validation of contracts, commingled water, to name a few, that the Secretary's regulations generated.

The sense of urgency is compounded by the Department of Interior's recent announcement that they intend to hold hearings during the upcoming months on regulations governing the act.

What this means, of course, is that the Department is reaching its mandated time limit for promulgating some kind of regulations that will govern the 1902 act. Since the Department has not rescinded or addressed some of Secretary Andrus' regulations, congressional inaction will insure that at least some of them will be adopted as the policy of the Department of Interior.

Let me at this time congratulate your leadership and the leadership of Secretary Watt, Congressmen Kazen and Lujan, and a host of other Government officials that are attempting to defuse this time bomb.

It is comforting to know that with you as chairman of the vital committee which has oversight over this act, that we in Congress will never again lapse into another period of congressional negligence. It is in that light that I am proud to be a cosponsor of S. 1867, which represents an excellent starting point in the process of reforming this archaic law.

While I have always questioned the wisdom and the need for these limitations, and have on numerous occasions noted my support for full repeal of the acreage limitations under the act, I am also aware of legislative realities which made outright repeal unlikely.

S. 1867 is a compromise piece of legislation that will alleviate the problems of this act, and I pledge my efforts to fine-tune the bill as it moves through the Senate and to work for its ultimate passage on the Senate floor.

In that regard, there are five points which I would like to see addressed during this discussion of S. 1867, and I will be pleased to discuss these with you and the committee in greater detail as the Senate considers this bill.

First of all, the equivalency provisions of the bill are designed to assure that owners of less productive lands are not at a disadvantage compared to owners of better quality lands.

Briefly, equivalency provisions would relate the most productive land, designated as class 1 to less productive land designated as class 2, 3, or 4. The acreage limitation is raised for less productive lands to make them more or less equivalent.

It is may hope that the bill will positively state our intent that the excess landholders will not have to sell off their excess lands below the expected equivalency level between the time the district requests equivalency classification and the time that that classification is subsequently granted.

Second, since rehabilitation and betterment [R. & B.] loans have always been treated as operation and maintenance loans by the Department of Interior, and as such are not subject to the acreage limitations of the act, I would hope that the Senate would not address R. & B. loans in the legislation that it considers.

In that light, Mr. Chairman, since I understand that there are a substantial number of R. & B. loans currently outstanding in Idaho, I intend to ask the Secretary of Interior for a written statement of understanding with regard to the inapplicability of acreage limitations on lands that are irrigated under R. & B. loans only.

Third, Mr. Chairman, I am hopeful that the final product of this Congress will define an excess landholding as one which exists within an irrigation district and not West-wide. There is precedent for this action in the nature of the irrigation contracts that are entered into with the Department.

I believe that an attempt to define a landholding as a West-wide landholding would create an administrative and enforcement nightmare for the Department. Currently, that enforcement power over excess acreage rests on the districts themselves.

Fourth, the legislation passed by both the House Interior Committee and the full Senate during the last Congress made the increased acreage limitations more or less self-enacting, that is, the irrigation districts would not have to amend their contracts to validate the holdings of excess landholders which received their water on excess lands.

I am concerned that if the irrigation district was required to amend these contracts, that they possibly would not go into the cost and trouble of amending merely to get the excess landholders off the hook. This may serve to defeat the purpose of our action to update the act.

Finally, Mr. Chairman, the bill in title III establishes requirements for leased lands which receive reclamation water. In the provision of that title, all lessees must provide the Secretary of Interior with a signed certificate of information involved in the leasing arrangement.

The nature of many lease arrangements in Idaho, however, is that they are small, and often revised annually or even semiannually. These small leases should not be required to go through the burdensome paperwork mandated by this bill.

Instead, I propose that the requirement for certification apply only to farmers leasing lands in excess of the acreage limitation for ownership, in the case of S. 1867, 1,600 acres. I believe such an amendment would eliminate the problems that would be faced by the small farm lessee while assuring the adequacy and propriety of the leasehold arrangements for large acres of land.

I look forward to discussing these minor points that could nonetheless pose some significant burdens on Idaho farmers as we proceed to consideration of the act.

Again, I appreciate this opportunity to address this critical issue for Idaho agriculture, and look forward to working with you as we complete the process of amending the Reclamation Act.

[The prepared statement of Senator Symms follows:]

TESTIMONY OF SENATOR STEVE SYMMS
BEFORE THE SENATE COMMITTEE ON
ENERGY & NATURAL RESOURCES

The need for changes to the Act.

Mr. Chairman, I welcome this opportunity to again address the critical need to change the outmoded and archaic provisions of the 1902 Reclamantion Act. As you know, the initial purpose of this law, which was closely related to the earlier Homestead and Desert Land Entry Acts, was to establish a program for the construction of water resource projects to encourage the development of the arid lands of the Western United States. It has evolved into a major water resource development program in the West, involving major river basins and multi-purpose projects providing hydroelectric power, municipal and industrial water supply, flood control and public recreation in addition to irrigation. The gross value of crops produced from reclamation farms approaches $5 billion with aggregate economic benefits to the nation of over $50 billion.

As I mentioned earlier, however, the Act simply has not been changed to meet changing times and the advent of innovative agricultural technology. Instead, it has been largely ignored over the years, as the federal government and landowners receiving reclamation water have entered into good faith contracts with little recognition of the consequences of their actions.

The reason we have this critical problem is the frightful failure of Congress to oversee this Act. The problem is exacerbated by a handful of northern tier Congressmen and Senators who seek to make scapegoats of Reclamation farmers in an effort to redefine the reclamation law in social terms. The victims are the bonafide family farmers, who, in simply trying to make a living were lulled into a false sense of security because Congress chose to ignore, rather than correct the Act's deficiencies.

The growing need for expeditious Congressional action.

There is a growing need for expeditious Congressional action, Mr. Chairman, a need which you have recognized and fully appreciate. We are sitting on a regulatory time-bomb which is ticking away in the Western United States. The bomb was set on August 25, 1977, when Secretary of Interior Andrus, in response to a Federal District court order, published proposed rules and regulations governing the then-Water and Power Resources Service's administration of the acreage limitation provisions of the 1902 Act. The regulations represented a radical departure from the administration of the Act, and were met with furor and intense opposition by Western Senators and Congressmen, including myself. Without going into great detail on those regulations, let me say that they would cause economic havoc among the good faith landowners in Idaho and other States served by reclamation projects. They would require Idahoans to sell all lands in excess of 160 acres per individual or stop receiving reclamation water to irrigate their crops. These sales would have to be made without consideration of the value of the water which made them productive. Secretary Andrus' regulations would force farm families to pack up and move out of their homes if they happened to live 51 or more miles away from their farms, or face the loss of their water. What Secretary Andrus seemed to imply was that the national interest was better served by crops grown within a 50 mile radius of the farmers home than it is by crops grown 51 miles from a farmer's home. There are similar, equally devastating problems regarding leasing, validation of contracts, comingled water, to name a few, that the Secretary's regulations generated.

The sense of urgency is compounded by the Department of Interior's recent announcement that they intend to hold hearings during the upcoming months on regulations governing the Act.

What this means, of course, is that the Department is reaching its mandated time limit for promulagating some kind of regulations that will govern the 1902 Act. Since the Department has not rescinded or addressed some of Secretary Andrus' regulations, Congressional inaction will ensure that at least some of them will be adopted as the policy of the Department of Interior.

Let me at this time congratulate your leadership and the leadership of Secretary Watt, Congressmen Kazen and Lujan, and a host of other government officials that are attempting to defuse this time bomb. It is conforting to know that with you as Chairman of the vital Committee which has oversight over this Act that we in Congress will never again lapse into another period of Congressional negligence. It is in that light that I am proud to be a cosponsor of S.1867, which represents an excellent starting point in the process of reforming this archaic law.

While I have always questioned the wisdom and the need for these limitations, and have on numerous occasions noted my support for full repeal of the acerage limitations under the Act, I am also aware of legislative realities which made outright repeal unlikely. S.1867 is a compromise piece of legislation that will alleviate the problems of this Act, and I pledge my efforts to fine-tune the bill as it moves through the Senate and to work for its ultimate passage on the Senate floor.

Recommendations for fine-tuning S. 1867.

In that regard, there are five points which I would like to see addressed during this discussion of S. 1867, and I will be pleased to discuss these with you and the Committee in greater detail as the Senate considers the bill.

First of all, the equivalency provisions of the bill are designed to assure that owners of less productive lands are not at a disadvantage compared to owners of better quality lands. Briefly, equivalency provisions would relate the most productive land, designated as Class 1 to less productive land, designated as Class 2, 3, or 4. The acerage limitation is raised for less productive lands to make them more or less equivalent. It is my hope that the bill will positively state our intent that excess landowners will not have to sell their excess lands below the expected equivalency level between the time the district requests equivalency classification and the time that the classification is granted.

Secondly, since Rehabilitation and Betterment (or R & B) loans have always been treated as operation and maintenance loans and as such not subject to the acerage limitations of the Act, I would hope that the Senate would not address R &B loans in the legislation that it considers. In that light, Mr. Chairman, since I understand that there are a substantial number of R & B loans currently outstanding in Idaho, I intend to ask the Secretary of Interior for a written statement of understanding with regard to the inapplicability of acerage limitations on lands that are irrigated under R & B loans only.

Third, Mr. Chairman, I am hopeful that the final product of the Congress will define an excess landholding as one which exists within an irrigation district and not West-wide. There is precedent for this action in the nature of the irrigation contracts that are entered with the Department. I believe that to attempt to define a landholding as a West-wide landholding would create an administrative and enforcement nightmare for the Department. Currently, that enforcement power over excess acreage rests on the districts themselves.

Fourth, the legislation passed by both the House Interior Committee and the full Senate during the last Congress made the increased acerage limitations more or less self-enacting, that is, the irrigation districts would not have to amend their contracts to validate the holdings of excess landholders receiving their water on excess lands. I am concerned that if the irrigation district was required to amend these contracts that they would not go to the cost and trouble of amending merely to get the excess landholders off the hook. This may serve to defeat the purpose of our action to update the Act.

Finally, Mr. Chairman, the bill in Title III establishes requirements for leased lands which receive reclamation water. In the provision of that Title, all lessees must provide the Secretary of Interior with a signed certificate of information involved in the leasing arrangement. The nature of many lease arrangements in Idaho, however, is that they are small, and often revised annually or even semi-annually. These small lessees should not be required to go through the burdensome paperwork mandated by this Bill. Instead, I propose that the requirement apply only to farmers leasing lands in excess of the acerage limitation for ownership, in the case of S.1867, 1600 acres. I believe such an amendment would eliminate the problems that would be faced by the small farm lessee, which assuring the adequacy and propriety of the leasehold arrangements for large acres of land.

I look forward to discussing these minor points that could pose significant burdens on Idaho farmers as we proceed to consideration of the Act. Again, I appreciate this opportunity to address this critical issue for Idaho agriculture, and look forward to working with you as we complete the process of amending the Reclamtion Act.

The **Chairman**. Thank you very much, Mr. Fay. I appreciate the statement that Senator Symms has given to the committee, as I have appreciated his advice and counsel as we went through the process of trying to determine what kind of legislation should be enacted. Some excellent points have been made, and ones that I am sure we will consider. I do appreciate his testimony and your appearance here this morning.

Mr. **Fay**. Thank you very much, Mr. Chairman.

The **Chairman**. Our next witness is Mr. John Scorsby, representing Congressman George Hansen. It is nice to have you here this morning.

Mr. **Scorsby**. Thank you.

The **Chairman**. George is out battling the snow somewhere.

STATEMENT OF HON. GEORGE HANSEN, A U.S. REPRESENTATIVE FROM THE STATE OF IDAHO, AS PRESENTED BY JOHN SCORSBY

Mr. **Scorsby**. Thank you, Mr. Chairman. I am happy to be here this morning representing Congressman Hansen, and I will proceed with his testimony.

Mr. Chairman, I want to thank you and the committee for scheduling these hearings and for taking the time to address the very serious and important questions before us on acreage limitation and residency provisions of the Federal reclamation laws. I recognize the enormity of your task.

The reclamation question before the committee today has been the subject of numerous hearings and discussions over the past few years and it is my hope that this Congress will be able to find a workable solution and put an end to the uncertainty.

There is a need for immediate action because the well-being of so many individual farmers and those who consume their products literally hangs in the balance waiting for a solution.

In fact, our national economy similarly demands that we protect our agricultural production which continues to be the single-most important contributor to our strength in international trade.

There are several constructive legislative proposals before the committees to adjust the reclamation law of 1902, including my own. Few who understand the situation will disagree that adjustment is necessary to more equitably handle the situation. The optimum proposal in the spirit of free enterprise upon which this country was founded, would be to eliminate all restrictive Government interference in such matters.

Incentive is vital to a successful operation. At the very least, we must be willing to write into any change, enough flexibility to provide the opportunity for survival. Any realistic solution to this problem must provide the opportunity for farmers to adjust to the many variables they encounter in so large a country with such varied circumstances as soil type, growing season, and elevation.

Special problems such as those presented by nonprofit organizations, and widows, who no longer live on the land but rely on income it provides, must also be considered.

This committee is well endowed with capable members and staff who have been and will continue to competently review the details of the various proposals, so I will make no attempt to analyze in detail the various bills.

You have many farmers and concerned citizens here today directly affected by this law. We are here to listen to their constructive suggestions and I will not take time from them with a detailed discussion.

However, I will continue to work in every way possible to augment your deliberations to insure that a rapid and final decision is made regarding this issue.

Again, I reiterate what I stated earlier: This question is sufficiently complex to require a response which allows flexibility. We have an efficient and highly successful agricultural production machine, and the question is, Will we allow it to function freely or bind it unreasonably with crippling limitations and restrictions?

You have a great challenge, Mr. Chairman. The continued success of American agriculture and the family farm itself very much depends on your wisdom in meeting this issue. I sincerely hope you can produce legislation which is flexible and realistic enough to resolve the longstanding 160-acre problem.

Thank you.

The CHAIRMAN. Thank you very much, and I thank Congressman Hansen for his trouble in preparing a statement as well as his constructive help in preparation of the legislation, and his efforts as it moves through the House.

As I mentioned in my opening statement, the Senate was able to pass a bill last year, but the conflicting political demands within various sections of the country seem to focus more in the House than they did in the Senate. And the result was, the House was not able to pass legislation last year. I hope they will be able to in 1982.

Thank you very, very much.

Mr. SCORSBY. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is Mr. Norm Young, Idaho Department of Water Resources, representing Gov. John V. Evans, State of Idaho.

STATEMENT OF HON. JOHN V. EVANS, GOVERNOR, STATE OF IDAHO AS PRESENTED BY NORMAN C. YOUNG, IDAHO DEPARTMENT OF WATER RESOURCES

Mr. YOUNG. Mr. Chairman, I am privileged this morning to represent Gov. John V. Evans at this hearing on Senate bill 1867, and to present his statement on this issue, which is of paramount importance to many Idaho farmers.

The statement presented this morning will reaffirm and supplement the Governor's views on this same issue provided in testimony on Senate bill 14 during March 1979.

First, we want to thank you and your committee for holding a hearing here in the West so that those directly affected by the issues can provide their views directly to you in person without the expense of traveling to Washington.

We also want to express our appreciation for you personally introducing legislation to resolve a problem that affects the Western

United States. We know that you have been involved in efforts to resolve this problem for a number of years, and it is appreciated.

Reclamation reform is a multifaceted problem. The economics of present-day farming has resulted in the formation of large farms, some with widely separated acreages. The need for large acreage just to be competitive in the agricultural market could not have been foreseen even by farsighted leaders in 1902, just as we cannot foresee events that may outmode legislation passed today. For this reason, I hope that Congress can be persuaded to take action now on this bill that would bring the Reclamation Act of 1902 into step with the needs of today.

Idaho does not have a large amount of land held in excess of the 160-acre limitation, but full enforcement of certain other provisions of the 1902 act would produce significant problems in Idaho. For example, the residency provisions have not been enforced for decades.

The ownership patterns which now exist could be unfairly disrupted by an abrupt enforcement of the residency requirements. Thus, while we are strongly in favor of family-owned-and-operated farms and recognize residency as one means of fostering this type of development, in the interest of fairness we reaffirm our support for removing the residency requirement for existing projects.

In Idaho our reclamation projects exhibit family farm characteristics and have done so without forced residency. A requirement that owners of lands benefited by reclamation must be either citizens of the United States, resident aliens, or a U.S.-based company would be in keeping with the concept that benefits from a Federal project should go to Americans.

The provisions of S. 1867 relative to the disposal of excess lands, payout, validation, equivalency, and consent of the U.S. Government to be sued over representations made to water users with regard to the applicability of reclamation law are further positive actions this legislation offers to correct key reclamation issues. We reaffirm our support for these provisions.

The number of acres to be covered by the ownership leasing privilege cannot be established by any magic formula. Rather, this figure must be determined by decisionmakers based upon a value judgment. The only test that can be applied is: Are the figures reasonable? We believe the leasing and ownership figures in title II are reasonable for existing projects within which the ownership patterns are already established.

Allowing a contracting entity to determine for itself whether to opt for the limited ownership-unlimited leasing arrangement of title I of the act or the expanded ownership-limited leasing provisions of title II, provides for local control of the decision which we feel is important and support.

There are two matters that need to be clarified prior to passage of the bill:

First, the cost and redtape of amending the contracts may be significant;

Second, within a single contracting entity there may exist excess ownership or leasing situations that will require the provisions of both title I and title II of the bill.

We encourage a streamlining of the procedures to reduce the cost to the contracting entity and perhaps to avoid these potential conflicts within a contracting entity.

We are not able to fully evaluate the effect of the bill on planning and construction of future reclamation projects. Idaho has potential for addtional new development and a need to rehabilitate existing irrigation systems.

The 160-acre limitation has been a roadblock for use of reclamation law for such projects. We ask that S. 1867 be changed, if necessary, to allow the planning and construction of new development or rehabilitation projects to have expanded acreage for family units. Perhaps the acreage for new projects should be similar to those available under the Desert Land Act. Residency provisions should also be retained for entry for new projects.

We, and I know you, are supportive of the State's right to allocate its water resources. Section 107 of S. 1867 should acknowledge specifically this principle so that there will be no misunderstanding that all waters, including those temporarily stored in a reclamation project, can only be diverted and used in accordance with State substantive and procedural requirements.

Commingling is not addressed by S. 1867, and we concur that the question of delivery of reclamation water to supplement an existing project does not need to be addressed at this time if the other provisions of S. 1867 are passed.

However, a clear statement that groundwater or wastewater flows that occur in part as a result of operation of a reclamation project are not subject to reclamation law would be timely. The phrase "made available from the operations of reclamation project facilities" that is used to define irrigation water and which appears several other places in the bill could be interpreted to include commingled groundwater and wastewater, part of which has been lost from the reclamation project. We would suggest more precise language, such as "delivered directly through reclamation facilities" should be submitted.

We are particularly pleased with the provisions in title II which address the problem which arises under existing law when one member of a family of four dies and that family is required to dispose of the 160 acres held in behalf of the deceased. The provisions in title II which allows a family to own the maximum acreage regardless of changes in their status, properly addresses this issue.

In conclusion, we reaffirm our support for a reform of the 1902 Reclamation Act and pledge our support to Congress and this committee in its efforts to enact amendments to the 1902 Reclamation Act.

We thank you.

[The prepared statement of Governor Evans follows:]

STATEMENT OF JOHN V. EVANS, GOVERNOR
STATE OF IDAHO
Hearing on Senate Bill 1867
Reclamation Reform Act of 1902
Boise, Idaho
January 11, 1982

Senator McClure:

My name is Norman C. Young, and I am privileged to represent Governor John V. Evans, at this hearing on Senate Bill 1867 and to present the Governor's statement on this issue which is of paramount importance to many Idaho farmers. The statement presented this morning will reaffirm and supplement the Governor's views on this same issue provided in testimony on Senate Bill 14, in March, 1979.

First, we want to thank you and your committee for holding a hearing here in the West so that those directly affected by this legislation can provide their views in person without incurring the expense of traveling to Washington, D. C. Also, we would like to commend you, Senator McClure, for personally introducing legislation aimed at resolving a problem that affects the western United States. We know that you have been involved in efforts to resolve this problem for a number of years, and it is appreciated.

Reclamation reform is a multi-faceted problem. The economics of present-day farming has resulted in the formation of large farms some with widely separated acreages. The need for large acreage just to be competitive in the agricultural market could not have been foreseen even by farsighted leaders in 1902, just as we, cannot foresee events that may outmode legislation passed today. For this reason, I hope that the Congress can be persuaded to take action now on this bill that would bring the Reclamation Act of 1902 into step with the needs of today.

Idaho does not have a large amount of land held in excess of the 160-acre limitation, but full enforcement of certain other provisions of the 1902 act would produce significant problems in Idaho. For example, the residency provisions have not been enforced for decades, if ever. The ownership patterns which now exist could be unfairly disrupted by an abrupt enforcement of the residency requirement. Thus, while we are strongly in favor of family-owned and operated farms and recognize residency as one means of fostering this type of development, in the interest of fairness we reaffirm our support for removing the residency requirements for existing projects. In Idaho our reclamation projects exhibit family farm characteristics and have done so without forced residency. A requirement that owners of lands benefited by reclamation must be either citizens of the United States, resident aliens, or a United States based company would be in keeping with the concept that benefits from a federal project should go to Americans.

The provisions of S. 1867 relative to the disposal of excess lands, payout, validation, equivalency, and consent of the U. S. government to be sued over representations made to water users with regard to the applicability of reclamation law are further positive actions this legislation offers to correct key reclamation issues. We reaffirm our support for these provisions. The number of acres to be covered by the ownership leasing privilege cannot be established by any magic formula. Rather, this figure must be determined by decision makers based upon a value judgment. The only test that can be applied is: Are the figures reasonable? We believe the leasing and ownership figures in Title II are reasonable for existing projects within which the ownership patterns are already established.

Allowing a contracting entity to determine for itself whether to opt for the limited ownership--unlimited leasing arrangement of Title I of the act or the expanded ownership--limited leasing provisions of Title II, provides for local control of the decision which of course is important and supported. There are two matters that need to be clarified prior to passage of the bill. First, the cost and red tape of amending the contracts may be significant. Second, within a single contracting entity there may exist excess ownership or leasing situations that will require the provisions of both Title I and Title II of the bill. We encourage a streamlining of the procedures to reduce the cost to the contracting entity and perhaps to avoid potential conflicts within a contracting entity.

We are not able to fully evaluate the effect of the bill on planning and construction of future reclamation projects. Idaho has potential for additional new development and a need to rehabilitate existing irrigation systems. The 160-acre limitation has been a roadblock for use of reclamation law for such projects. We ask that S. 1867 be changed, if necessary, to allow the planning and construction of new development or rehabilitation projects to have expanded acreage for family units. Perhaps the acreage for new projects should be similar to those available under the Desert Land Act. Residency provisions should also be retained for entry for new reclamation projects.

We, and I know you, are supportive of a state's right to allocate its water resources. Section 107 of S. 1867 should acknowledge specifically this principle so that there will be no misunderstanding that all waters, including those temporarily stored in a reclamation project, can only be diverted and used in accordance with state substantive and procedural requirements.

Comingling is not addressed by S. 1867, and we concur that the question of delivery of reclamation water to supplement an existing project does not need to be addressed at this time if the other provisions of S. 1867 are passed. However, a clear statement that groundwater or waste flows that occur in part as a result of operation of a reclamation project are not subject to reclamation law would be timely. The phrase "made available from the operations of reclamation project facilities" that is used to define irrigation water and which appears several other places in the bill could be interpreted to include comingled groundwater and waste water, part of which is lost from a reclamation project. We would suggest more precise language such as "delivered directly through reclamation facilities" be substituted.

We are particularly pleased with the provisions in Title II which address the problem which arises under existing law when one member of a family of four dies and that family is required to dispose of the 160 acres held in behalf of the deceased. The provisions in Title II which allows a family to own the maximum acreage regardless of changes in their status properly addresses this issue.

In conclusion, we reaffirm our support for a reform of the 1902 Reclamation Act and pledge our support to Congress and this committee in their efforts to enact amendments to the 1902 Reclamation Act.

The CHAIRMAN. Thank you very much, and I thank the Governor for his interest.

Certainly, one point that was made in that statement is fundamental to my deliberations, that is, that the water use in the reclamation project is appropriated to State law. That has been the case, and it is my firm conviction that that must remain the case, and I appreciate the Governor's support to the legislature.

Mr. YOUNG. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Mark Moorman from Burley. Welcome once again, to come before the committee.

Mr. MOORMAN. Thank you.

STATEMENT OF MARK MOORMAN, BURLEY, IDAHO

Mr. MOORMAN. My name is Mark Moorman, and my address is Burley, Idaho. My occupation is a farmer and landowner in Cassia County.

Senator McClure, I wish to commend you for your authorship of S. 1867. The 1,600 acres, plus 1,600 leased, I think, are very essential to maintaining viable family farms in Idaho.

I also commend you and your committee for the excellent support and consideration of our problems here in the agricultural area.

Senator McClure, I recognize that this hearing deals with S. 1867, but I would like to emphasize our position on five areas of both bills which are becoming quite troublesome issues in the House subcommittee considering the Lujan bill, H.R. 4265.

No. 1, a requirement that the landowner must participate in everyday operations of the farm is very unreasonable and very unrealistic. This proposed requirement being considered as an amendment to H.R. 4265 by the House subcommittee would only create a vast number of problems, and would not contribute in any way to the maintenance of family farms.

Some Congressmen seem to forget that there are other than bureaucratic ways to accomplish the good objectives of free enterprise. To keep farms in the family will require freedom of transfer to family members whether or not they live on the land.

No. 2, a requirement proposed by several members of the House Interior Subcommittee to make irrigation districts amend the Bureau of Reclamation contracts to allow individuals to take advantage of higher acreage limitations is very troublesome. It would be impossible for a minority of landowners to force an irrigation district to amend its contract.

No. 3, I would also emphasize the importance of an individual, or irrigation entity, to be free of acreage limitations after payout of their reclamation charges attributable to irrigation. Other private businesses are allowed to operate freely. Farms are just as important a part of the great free enterprise system.

No. 4, validation of existing agreements is also very important to Idaho irrigation entities, as well as to individual landowners. The provisions for validation of contracts and agreements, and the payout provisions of S. 1867 adequately protect landowners and will prevent circumvention of the intentions of S. 1867.

No. 5, a tremendous amount of water in rivers, streams, and the underground aquifer is "commingled" in the Western States. I would urge that "commingling" of water would not put any lands under acreage limitations that would not otherwise be so qualified.

Senator McClure, I didn't address all the issues that we have in mind, but these are some that are seemingly coming into some of the considerations of the present irrigation law.

[The prepared statement of Mr. Moorman follows:]

STATEMENT OF MARK MOORMAN, BURLEY, IDAHO

Mr. Chairman I wish to commend you, Senator McClure for your authorship of S. 1867. The 1,600 acres plus 1,600 leased are very essential to maintaining viable family farms in Idaho. I also commend you and your committee for the excellent support and consideration of our problems.

Senator McClure, I recognize that this hearing deals with S. 1867, but I would like to emphasize our position on five areas of both bills which are becoming troublesome issues in the House Subcommittee considering the Lujan Bill H.R. 4265.

(1) A requirement that the land owner must participate in everyday operations of the farm is very unreasonable and unrealistic. This proposed requirement being considered as an amendment to H.R. 4265 by the House Subcommittee would only create a vast number of problems, and would not contribute in any way to the maintenance of family farms. Some Congressmen seem to forget that there are other than "bureaucratic ways" to accomplish the good objectives of free enterprise. To keep farms in the family will require freedom of transfer to family members whether or not they live on the land.

(2) A requirement proposed by several members of the House Interior Subcommittee to make Irrigation Districts amend the Bureau of Reclamation contracts to allow individuals to take advantage of higher acreage limitations is very troublesome. It would be impossible for a minority of landowners to force an Irrigation District to amend its contract.

(3) I would also emphasize the importance of an individual, or irrigation entity, to be free of acreage limitations after payout of their Reclamation charges attributable to irrigation. Other private businesses are allowed to operate freely. Farms are just as an important part of the great free enterprise system.

(4) Validation of existing agreements is also very important to Idaho irrigation entities, as well as to individual landowners. The provisions for Validation of Contracts and agreements, and the payout provisions of S. 1867 adequately protect landowners and will prevent circumvention of the intentions of S. 1867.

(5) A tremendous amount of water in rivers, streams, and the underground aquifer is "commingled" in the Western States. I would urge that "commingling" of water would not put any lands under acreage limitations that would not otherwise be so qualified.

The CHAIRMAN. Mark, I thank you very much for those points, and for making reference to the legislation pending in the House as well, because certainly whatever comes out of the Congress will reflect the work in the House as well as that of the Senate, and I appreciate your focusing on a couple of those issues. Thank you very much.

Maurice Klaas, Twin Falls Canal Co.

STATEMENT OF MAURICE KLAAS, TWIN FALLS CANAL CO., TWIN FALLS, IDAHO

Mr. KLAAS. Mr. Chairman, members of the committee, ladies, and gentlemen:

My name is Maurice Klaas. I am a director and secretary of the board of directors of the Twin Falls Canal Co. I appear here today at the request of the directors.

I wish to commend you, Chairman McClure, first, for the introduction of S. 1867, and secondly, for holding this field hearing in Boise. We appreciate the opportunity to appear as concerned farmers and comment on the subject of 160 limitation.

You probably wonder why the Twin Falls Canal Co. would appear at this hearing, since in recent history, the company was granted a so-called secretarial exemption by the Secretary of the Interior pursuant to a solicitor's opinion.

You may recall that that exemption was granted pursuant to an opinion written by Solicitor Barry in which he suggested that secretarial exemptions could be granted upon a finding that a pattern of family sized farms had developed, and that there was no capital debt remaining to be paid to the United States.

Twin Falls fit that classification, and has fit that classification since early in the century. We understand that we were given this exemption as well as some 20 to 30 other organizations in the United States.

We now understand that the present solicitor contemplates a subsequent opinion which would have the effect of contradicting the Barry opinion, and possibly then leaving the validity and legality of our company's secretarial exemption in the air.

For this reason, we ask the committee to consider language in the legislation that would ratify the secretarial exemptions previously granted.

While we support such a ratification, a modernization of the law would probably cure the problem for most Idaho irrigators and irrigation districts and companies.

For example, we commend the increase in acreage to reflect modern-day farming methods. We commend the elimination of a residency requirement which could severely impact many Idaho farm families. Many sons and daughters did not remain on the farm to carry on the tradition of their parents, because the farm would not support that many people. They migrated to the cities to find work, and then they inherited their undivided interest in the farm.

If they had to maintain a residency requirement, it would force them to sell their interest in the farms. In these cases, the same farm family is operating and managing the farm.

We feel that because you are the son of a farmer and move to the city, that you should not be forced to sell your interest in your heritage.

In Idaho, many of the districts have contracts with the United States whereby the contract suggests that the limitations in acreage do not apply upon payout of the capital debt. They also provide for lump sum and accelerated payments both by the entities and districts as well as individuals. Because those contracts were negotiated and agreed upon, they need to be recognized as valid and binding.

As we read S. 1867, nothing would be required of a district that was willing to live with the 160-acre limitation law. People in these districts could then lease any acreages they sought. Presumably, this is a statement of the law as we all thought it to be.

Title II of your bill gives the districts an option to get their contracts amended so as to qualify for the ownership of more than 160 acres, and for leasing a limited additional amount of acres.

While this number is probably bigger than would be required to solve most of Idaho's problems, our point is that the larger number ought to be automatic as to all who irrigate with water from Federal facilities.

To require a contract amendment to take advantage of the larger number seems to us to be cumbersome.

It is our suggestion that perhaps the bill ought to be written so that everyone gets the advantage of the larger ownership number, and so that contract amendments would only be required if one sought the right to lease an unlimited amount of acres.

Thank you very much.

[The prepared statement of Mr. Klaas follows:]

TWIN FALLS CANAL COMPANY
POST OFFICE BOX 326
TWIN FALLS, IDAHO, 83301

BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

Boise, Idaho
January 11, 1982
Field Hearing

STATEMENT OF MAURICE KLAAS
Representing the Twin Falls Canal Company Board of Directors
Concerning S. 1867 and H.B. 4265

Mr. Chairman, members of the Committee, Ladies and Gentlemen:

My name is Maurice Klaas. I am a Director and Secretary of the Board of Directors of the Twin Falls Canal Company. I appear here today at the request of the Directors.

I wish to commend Chairman McClure, first for the introduction of S. 1867, and secondly for holding this field hearing in Boise. We appreciate the opportunity to appear as concerned farmers and comment on the subject of 160 acre limitation.

You probably wonder why the Twin Falls Canal Company would appear at this hearing, since in recent history the Company was granted a so-called "secretarial exemption" by the Secretary of Interior pursuant to a Solicitor's opinion. You may recall that that exemption was granted pursuant to an opinion written by Solicitor Barry in which he suggested that secretarial exemptions could be granted upon a finding that a pattern of family sized farms had developed and that there was no capital debt remaining to be paid to the United States. Twin Falls fit that classification and has fit that classification since early in the century. We understand that we were given this exemption as well as some 20 to 30 other organizations in the United States.

We now understand that the present solicitor contemplates a subsequent opinion which would have the effect of contradicting the Barry opinion and possibly then leaving the validity and legality of our Company's secretarial exemption in the air. For this reason, we ask the committee to consider language in the legislation that would ratify the secretarial exemptions previously granted.

While we support such a ratification, a modernization of the law would probably cure the problem for most Idaho irrigators and irrigation districts and companies. For example, we commend the increase in acreage to reflect modern day farming methods. We commend the elimination of a residency requirement which could severely impact many Idaho farm families. Many sons and daughters did not remain on the farm to carry on the tradition of their parents because the farm would not support that many people. They migrated to the cities to find work and then they inherited their undivided interest in the farm. If they had to maintain a residency requirement, it would force them to sell their interest in the farms. In these cases the same farm family is operating and managing the farm. We feel that because you are the son of a farmer and move to the city that you should not be forced to sell your interest in your heritage.

In Idaho many of the districts have contracts with the United States whereby the contract suggests that the limitations in acreage do not apply upon pay-out of the capital debt. They also provide for lump sum and accelerated payments both by the entities and districts as well as individuals. Because those contracts were negotiated and agreed upon, they need to be recognized as valid and binding.

As we read S. 1867, nothing would be required of a district that was willing to live with the 160 acre limitation law. People in these districts could then lease any acreages they sought. Presumably this is a statement of the law as we all thought it to be. Title II of your Bill gives the districts an option to get their contracts amended so as to qualify for the ownership of more than 160 acres and for leasing a limited additional amount of acres. While this number is probably bigger than would be required to solve most of Idaho's problems, our point is that the larger number ought to be automatic as to all who irrigate with water from federal facilities. To require a contract amendment to take advantage of the larger number seems to us cumbersome. It is our suggestion that perhaps the Bill ought to be written so that everyone gets the advantage of the larger ownership number and so that contract amendments would only be required if one sought the right to lease an unlimited amount of acres.

Thank you.

The CHAIRMAN. Well, thank you very much.

There have been two or three of the statements that have mentioned the difficutly of amending a contract. Our problem, it seems to me, in this area is a legal one.

There are contracts, and we cannot by the passage of a statute infringe upon the validity of an existing contract. We can give people the opportunity to change contracts, but I am a little perplexed as to how we can enforce a change in an existing contract without giving the people the opportunity to negotiate for a new contract.

But simply impose a change in the existing contract, I think there is a legal question that we have to address there.

Mr. KLAAS. I see.

The CHAIRMAN. I understand the concern that has been expressed, and we will try to address that, and hopefully it will be done in the least cumbersome way.

Mr. KLAAS. Thank you very much, sir.

The CHAIRMAN. Yes, sir. Thank you.

Mr. Russell Brown of Idaho Falls. Is Russ here this morning?

[No response.]

[The prepared statement of Mr. Brown follows:]

Idaho Environmental Council

P.O. Box 1708
Idaho Falls, Idaho 83401

Testimony of Russell A. Brown
on the Reclamation Reform Act of 1981
for
the Senate Natural Resources and Energy Committee

January 1982

Reform of the Reclamation Act of 1902 is needed. However, the proposed legislation would not be a reform; it would instead provide legality for the practices which have been used to circumvent the purpose of the law. Subsidies in excess of $2 million per year could be provided to farm operations which are many times larger than those needed to support a family. The potential amounts and distribution of subsidies allowed by the proposed "reform" provide a clear picture of legislation which would enrich the few at the expense of many. Effective reform of the Reclamation Law can be accomplished, but it must be done from the perspective of correcting flaws rather than the licensing of past abuses.

The original Act provided for entry on no less than 40 acres and no more than 160 acres, with the final decision to be made by the Secretary on the basis of what was "reasonably required for the support of a family". In support of the legislation, Congressman Jones of Washington said, "the great object of this bill is to furnish homes for the homeless and farms for the farmless" (35 Congressional Record, p. 6755, 1902).

- The purpose was encouragement of settlement, not establishment of subsidy.
- The key qualification was "reasonably required for support of a family". That stipulation, combined with current data on farm income and acreage, can provide a fair basis for reform.

Acreage Distribution

What is the present situation in the use of reclamation water on farms? The Draft Environmental Impact Statement on Acreage Limitation, (DES-81-1) prepared by the U.S. Department of Interior, provides data. The report includes an analysis for all 17 Western States (Westwide) served by federally developed water and a separate analysis for the Westlands Water District in central California.

TABLE 3.4 DISTRIBUTION OF FARM OPERATIONS AND ACREAGE BY SIZE OF FARMS, WESTWIDE

Size of Farm Operations (acres)	Number of Farm Operations	Cumulative Percent	Irrigable Acres	Cumulative Percent
1-160	35,498	74.5	1,948,320	23.0
161-320	5,810	86.7	1,343,859	39.0
321-640	4,494	96.1	3,013,683	62.8
641-960	607	97.4	487,420	68.6
961-1,280	399	98.3	433,463	73.7
1,281-1,920	396	99.1	605,275	80.8
1,921+	435	100.0	1,618,630	100.0

Given the present administrative practice, a family can own up to 640 acres of reclamation land. Using 640 acres as a reference point, Table 3.4 shows that 96.1% of all reclamation farm operations meet that standard. Only 3.9% of all reclamation-served farms exceed 640 acres.

Table 3.4 further shows that:

- the 45,802 farms (under 640 acres) have an average size of 116 acres
- the 1,837 farms (over 640 acres) have an average size of 1,711 acres.

These data show that the present draft of the proposed legislation (which allows combined ownership and licensing of as much as 3200 acres) would legalize federal subsidies of a small number of large landowners. The majority (96.1%) would not be affected.

Subsidy Levels

The magnitude of the subsidy to the present large landowners can be estimated by use of the Westwide subsidy and acreage data provided in Attachment II, Tables A and D, of the DEIS combination of acreage and subsidy data yields a total subsidy of $1.534 billion per year for 1.838 million acres, or an average value of $834/acre. While site-specific data would provide an exact basis, the $834/acre value leads to the following results:

Farm Size	%	Average Size	Average Annual Subsidy
1-640 acres	(96.1%)	116 acres	$ 96,700
640 + acres	(3.9%)	1711 acres	$1,427,000

In the Westlands District (DEIS Table 3.13, p. 3-73) the average farm size is now 2,249 acres; the subsidy level (Table D) is $1422/acre. The average subsidy in Westlands is $3.2 million per year per farm. The Westlands Water District now receives $677,000,000 of federally-subsidized water per year. The present crop value in Westlands is only $299,000,000. The federal subsidy is more than double the value of the crops produced.

Farm Income

The Acreage Limitation DEIS states (p. 3-16), "at 320 acres" (Westwide) "or larger, all farms in the field crops districts were relatively prosperous when compared to the 1978 national average." The data of Table B (p. II-ii) indicate a net on-farm income of $35,000/year for a 320-acre farm and $50,000/year for a 640-acre farm.

No justification for expansion of the acreage limitation to 3200 acres (1600 owned/1600 leased) can be found in farm income data. Even a 320-acre reclamation farm produced three times the 1978 average net farm income of $10,037.

SUMMARY

The Idaho Environmental Council supports:

- Strict residency and participation requirements
- A 160-acre limitation per person maximum for all owned and leased lands
- Application of Reclamation Law to Corps projects
- Full cost (not the present artificially low cost) for water delivered to all acres over the limitation.

The proposed legislation offers incredible subsidies to those few landowners who exceed the present acreage limitations. There is no justification for water-welfare for the rich. Expansion to a 3200-acre limit would result in multi-million dollar subsidies to landowners who already earn five to ten times the average American's income. Reclamation law has been warped, abused, and corrupted during the eighty years since its passage. But that dismal history offers no excuse for the proposed Reclamation Reform Act of 1981. The words of Congressman Hepburn of Iowa, spoken in 1902, still ring true, "This bill is the most insolent and impudent attempt at larceny that I have ever seen embodied in a legislative proposition...... They ask us.... to give away an empire in order that their private property may be made valuable.... We might as well put our hands into the Treasury and take it out."

The CHAIRMAN. Mr. Don Jacklin of Jacklin Seed Co.

Let me just announce for the record that if Mr. Brown or others who are not here at this time, and come in later, we will give them the opportunity at the time they come in.

Mr. Jacklin?

STATEMENT OF ROBIN HOWELL, JACKLIN SEED CO., POST FALLS, IDAHO

Mr. HOWELL. Mr. Chairman, I am Robin Howell representing Jacklin Seed Co., a grass seed producer in the Spokane Valley in Washington, and Rathdrum Prairie in Idaho.

Jacklin Seed Co. operates a grass seed conditioning plant, and represents a large number of irrigated grower acres. Over 50 percent of this irrigated production occurs under contractual agreements with Federal water reclamation districts.

Therefore, as a representative of the irrigated grass seed industry of Idaho and Washington, I strongly support the testimony of Sherl Chapman of the Idaho Water Users Association that was presented on December 10, 1981.

We would like to commend the Senator and his cosponsors for their sponsorship of S. 1867.

We would like to offer a few comments in areas that could affect our local irrigation area:

NO. 1, OPTIONAL EXPANDED OWNERSHIP

In title II, section 201(b), we are not in favor of excluding churches, trusts, and corporations from being a qualified recipient for delivery of water.

NO. 2, EQUIVALENCY

We support your concept on establishing equivalency, because of the different land classes, soil characteristics, crop adaptability, and production costs. This is a very important section.

NO. 3, LEASING

We support your concept on leasing with the exceptions of the reference to title II, section 201(b). The American farmer needs to have flexibility to continue to farm at a profit, and he can't do this on limited acreage. It is important that he have enough acres to continue to feed America and the world.

Thank you for the opportunity to testify here today, and urge you that you pass legislation to modify the 1902 Reclamation Act as rapidly as possible.

[The prepared statement of Mr. Howell follows:]

MR. CHAIRMAN, I AM ROBIN HOWELL REPRESENTING JACKLIN SEED COMPANY, A GRASS SEED PRODUCER IN THE SPOKANE VALLEY IN WASHINGTON, AND RATHDRUM PRAIRIE IN IDAHO. JACKLIN SEED COMPANY OPERATES A GRASS SEED CONDITIONING PLANT, AND REPRESENTS A LARGE NUMBER OF IRRIGATED GROWER ACRES. OVER 50% OF THIS IRRIGATED PRODUCTION OCCURS UNDER CONTRACTUAL AGREEMENTS WITH FEDERAL WATER RECLAMATION DISTRICTS. THEREFORE, AS A REPRESENTATIVE OF THE IRRIGATED GRASS SEED INDUSTRY OF IDAHO AND WASHINGTON, I STRONGLY SUPPORT THE TESTIMONY OF SHERL CHAPMAN OF THE IDAHO WATER USERS ASSOCIATION THAT WAS PRESENTED ON DECEMBER 10, 1981.

WE WOULD LIKE TO COMMEND THE SENATOR AND HIS CO-SPONSORS FOR THEIR SPONSORSHIP OF S-1867.

WE WOULD LIKE TO OFFER A FEW COMMENTS IN AREAS THAT COULD EFFECT OUR LOCAL IRRIGATION AREA:

1. OPTIONAL EXPANDED OWNERSHIP:

   IN TITLE II, SECTION 201 (B), I AM NOT IN FAVOR OF EXCLUDING CHURCHES, TRUSTS, AND CORPORATIONS FROM BEING A QUALIFIED RECIPIENT FOR DELIVERY OF WATER.

2. EQUIVALENCY:

   WE SUPPORT YOUR CONCEPT ON ESTABLISHING EQUIVALENCY, BECAUSE OF DIFFERENT LAND CLASSES, SOIL CHARACTERISTICS, CROP ADAPTABILITY AND PRODUCTION COSTS. THIS IS A VERY IMPORTANT SECTION.

3. LEASING:

   WE SUPPORT YOUR CONCEPT ON LEASING WITH THE EXCEPTIONS OF THE REFERENCE TO TITLE II, SECTION 201 (B).

   THE AMERICAN FARMER NEEDS TO HAVE FLEXIBILITY TO CONTINUE TO FARM AT A PROFIT AND HE CAN'T DO THIS ON LIMITED ACREAGE.

   IT IS IMPORTANT THAT HE HAVE ENOUGH ACRES TO CONTINUE TO FEED AMERICA AND THE WORLD.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY HERE TODAY, AND URGE THAT YOU PASS LEGISLATION TO MODIFY THE 1902 RECLAMATION ACT AS RAPIDLY AS POSSIBLE.

The **Chairman**. Thank you very much, Mr. Howell. I appreciate your testimony.

Mr. **Howell**. Thank you.

The **Chairman**. Mr. Manuel Schneidmiller of Schneidmiller Land Co., Post Falls.

Sometimes people in southern Idaho refer to this area as the Banana Belt in talking to the people from the Panhandle. I don't believe we will find anybody from the Magic Valley or Treasure Valley today claiming that this is the Banana Belt, while you people from Post Falls live in a cold area.

Mr. **Schneidmiller**. We find that to be a fact, Senator. It is cold up there, also.

The **Chairman**. Thank you.

STATEMENT OF MANUEL SCHNEIDMILLER, SCHNEIDMILLER LAND CO., POST FALLS, IDAHO

Mr. **Schneidmiller**. My name is Manuel Schneidmiller. I reside at North 1551 Chase Road, Post Falls.

I have been a farmer in northern Idaho for 32 years. I represent my family, consisting of five brothers and their families in several combinations of operations, including two subchapter S corporations. It is important to understand that the total acreage farmed within our operation, subject to the Reclamation Act of 1902, is only 800 acres, and we are still plagued with excess land.

The corporation is a tool many small family farms use. Our corporation, and many like them, are being used by farmers and small businesses to better handle their particular operations. We, in no way, could operate—could have our operation, such as ours, and work within the act of 1902.

It is imperative that the acreage limitation be increased as quickly as possible. Further delay will only create additional hardship and anxiety for many farmers. Farmers were told in many cases in the past about the restrictions, but in many cases were told that it really didn't matter, because nothing would ever be done about it.

The words "residency", "equivalency", "excess lands", "commingled water", and "acreage limitation" are just words. But when used in the 1902 Reclamation Act, they take on a more serious meaning, and create grave concern for the irrigator.

I have had an opportunity to review the testimony by Sherl Chapman of the Idaho Water Users, and fully support views expressed in his presentation.

There are several points, however, that I wish to reemphasize:

When electing to use title II of the act, it would seem that this very important portion of the act would be handled in a more direct manner to the landowner. I feel the need to be handled by the district would be very difficult and cumbersome.

Regarding equivalency and acreage limitation, it is imperative to understand that soil types, characteristics, and climatic conditions greatly influence acreage required to operate an economic farming unit.

In our specific farming community, the few crops that are available to us require larger acreages.

My experience seems to indicate that farmers have been restricted in many fields, not only in the act of 1902, such as loans, farm loans that have gone on in the past where a farmer would need 20 acres to make a bare living—20 cows, I should say—and funds have only been available for 10 cows.

The regulations of the Reclamation Act of 1902 may have been appropriate at that time. However, through the years, it has been increasingly more difficult for farmers to maintain viable operations within acreage limitations permitted by the act. The very rules that were intended to keep people on the land contributed to their failure.

In today's agricultural economy, those same rules assure the failure to many small farm operators.

I urge the much needed enactment of S. 1867.

I wish to thank Senator McClure and his associates for their effort in preparing S. 1867.

Thank you for the privilege of allowing me to be at this meeting. Thank you, Senator.

[The prepared statement of Mr. Schneidmiller follows:]

STATEMENT OF MANUEL SCHNEIDMILLER, SCHNEIDMILLER LAND CO.

My name is Manuel Schneidmiller. I reside at N. 1551 Chase Road, Post Falls, Kootenai County, Idaho. I have a degree in Agronomy from Washington State University, followed by employment with the Farm Security Administration. I served 25 years on the Post Falls Irrigation District Board. I have been a farmer in Northern Idaho for 32 years.

I represent my family, consisting of five brothers and their families in several combinations of operations, including two Sub-Chapter S corporations. It is important to understand that the total acreage farmed within our operation, subject to the Reclamation Act of 1902, is only about 800 acres, and we are still plagued with excess land.

The corporation is a tool many small family farms use. Our corporations, and many like them, are being used by farmers and small businesses to better handle their particular operations. We, in no way, could have an operation such as ours and work within the Act of 1902.

It is imperative that the acreage limitation be increased as quickly as possible. Further delay will only create additional hardship and anxiety for many farmers. Farmers were told not to be concerned about the restrictions of the act, but time has proven that was not the case.

The words—residency—equivalency—excess lands—commingled water—and acreage limitation—are just words, but when used in the 1902 Reclamation Act, they take on a more serious meaning, and create grave concern for the irrigator.

I have had an opportunity to review the testimony given by Sherl Chapman of the Water Users Association before the Senate Energy and Natural Resources Committee. I fully support the views expressed in his presentation.

There are several points, however, that I wish to re-emphasize:

(1) When electing to use title II of the act, it would seem that this very important portion of the act would be handled in a more direct manner to the land owner. I feel its need to be handled by the District would be very difficult and cumbersome.

(2) Regarding equivalency and acreage limitation—it is imperative to understand that soil types, characteristics and climatic conditions greatly influence acreage required to operate an economic farming unit. In our specific farming community, the few crops available to us require larger acreages. My experience seems to indicate that farmers have been restricted to just a bare existence, by this act, or in the case of loans. For an example, where it was necessary to have 20 cows, funds were only made available for 10.

The regulations of the Reclamation Act of 1902 may have been appropriate at that time. However, through the years, it has been increasingly more difficult for farmers to maintain viable operations within acreage limitations permitted by the act. The very rules that were intended to keep people on the land contributed in their failure. In today's agricultural economy, those same rules assure the failure of the small farm operator.

I urge the much needed enactment of S. 1867.

I wish to thank Senator McClure and his associates for their effort in preparing S. 1867. Thank you for the privilege of allowing me to make this presentation.

Thank you.

The **Chairman**. Thank you very much, Mr. Schneidmiller.

In your own family operations, you have mentioned that there are two subchapter S corporations. How many total members of the family would be involved in those corporations?

Mr. **Schneidmiller**. Well, in the operation, there is probably about 10 or 12 of us.

The **Chairman**. So the provision in 201(B) which allows a qualified recipient of not more than 25 members would adequately cover your family operation?

Mr. **Schneidmiller**. That would cover it, but the excess land thing is just devastating.

The **Chairman**. Thank you very much. I appreciate your testimony.

Mr. **Schneidmiller**. Thank you.

The **Chairman**. Mr. Roy Bodine, representing East Greenacres Irrigation District, the Intermountain Grass Growers, and Bodine Farms of Post Falls, Idaho.

Roy, it is good to see you again and have you here before the committee meeting.

Mr. **Bodine**. Thank you, Mr. Senator. I will not be representing the Grass Growers, because the executive secretary of the Grass Growers is here, and will be representing them.

The **Chairman**. All right. Thank you.

STATEMENT OF ROY BODINE, EAST GREENACRES IRRIGATION DISTRICT AND BODINE FARMS, POST FALLS, IDAHO

Mr. **Bodine**. I appear here today representing the East Greenacres Irrigation District and Bodine Farms of Post Falls, Idaho, the latter being a farm enterprise in which I am part owner and a partner with my brother and nephew.

Additionally, for the record, let it be noted that I am president of the Idaho Water Users Association, and in that capacity, familiar with the testimony presented in behalf of the association by its executive director, Mr. Sherl Chapman. I can and do endorse that testimony and wish to attest its correctness in reflecting the views of association members.

Bodine Farms crops between 1,700 and 1,800 acres, all of it irrigable. Approximately one-third of the acreage is water serviced by the East Greenacres Irrigation District under contract with the U.S. Bureau of Reclamation.

It is our belief that S. 1867, if enacted, will solve a troublesome, festering farm problem. The author and sponsors are to be congratulated for their perception and proposed treatment of that problem. Accordingly, we urge enactment of S. 1867 as soon as possible.

Respectfully, we wish to suggest some minor changes and/or language additions for consideration. The following detail is in elaboration of these specific points.

Equivalency: This is an extremely important part of S. 1867. It follows that standards and criteria to govern the determinations called for within S. 1867 in this matter should be precisely detailed. Included should be all the factors affecting economic feasibility of irrigated agriculture, among them the cost of finding markets for the mix of products which can be profitably produced in the concerned area.

Commingling: Should be addressed by S. 1867 to make certain those irrigation districts which use only a small amount of water from a Federal reservoir, perhaps 25 percent or less, are excluded from application of this acreage limitation.

Payout: Provision should be made in S. 1867 to accommodate the individual owners who wish to prepay ahead of an established contract to relieve their lands of the acreage limitation.

Optional expanded ownership: Contract renegotiation by irrigation districts should not be required for application of title II in behalf of landowners who wish it. Rather, S. 1867 ought to provide a means and method for extension of this privilege directly to individual landowners.

Acreage limitation: This is what S. 1867 is all about. Its importance dwarfs all other considerations.

Key to successful farming is always, inescapably enough acreage. It is an ever present, absolute requirement, and the most important factor in the equation of things necessary to insure continuance of the small family farm, long and often declared the transcendent objective of farm legislation. Bluntly put, the family farm cannot survive the competition of neighbors unfettered by unrealistic acreage limitations.

The ultimate irony will certainly be reached by enactment, or retention of acreage limitations that cancel out the very people who are supposed to benefit.

Farming has changed dramatically during the last half century, but the equation factors which produce a profit or a loss remain largely the same. Their relevancy, one to another, and collectively to the end objection of ongoing, profitable operation is nondisputable.

Acreage must be geared to equipment, to manpower, to crop selection, to production practices, to desired product volumes and to markets. The influence of acreage extends across all the factors within the equation.

An imbalance of acreage is certain to create an out-of-line production cost, less than the desired product volume and, of course, inadequate receipts from the marketplace.

A one-word summation of the inevitable result under this circumstance is the word "failure," the only possible alternative being a part-time operation supported by outside income.

Perhaps I can illustrate the startling extent of change in agricultural practices with a personal reference. Fifty years ago, or thereabouts, my father operated two stationary threshing machines in the Palouse country of eastern Washington. The threshers were powered by straw burning steam engines, and each of the units had a complement of 35 men and a somewhat larger number of horses. Each thresher produced between 2,000 and 2,500 bushels of wheat per 12-hour day. Now a single combine operated by 1 man does the work of the 70 men, and all the horses employed by my father.

Equivalent progress has taken place in irrigation equipment and across the broad front of farm operations. It enables the family farm to manage a much larger acreage. In fact, it compels the family farm to expand its operations to function efficiently and compete with other farmers.

If the avowed intent to perpetuate the family farm is genuinely held, the present 160-acre-ownership limitation of the 1902 Reclamation Act must be lifted. Failure to do so, and to adopt reasonable, realistic limitations in replacement, will be counterproductive.

Matter not the strength of the bond existing between a farmer and his land, the bond will sever under a condition that denies opportunity for profit. The present 160-acre limitation constitutes such a denial.

Aftermath of continuing this limitation, or of imposing another that is too low, will be forfeiture of farmland to development or other use. Parenthetically it should perhaps be added that the shrinking farm acreage of this Nation is already considered critical and cause for alarm.

There will be difference of opinions expressed here and elsewhere as to the exact acreage limitations which should be imposed by S. 1867. The farmer who produces grain needs more acreage than does the farmer who produces fruit, operates a dairy or a vineyard. A god-awful lot of strawberries can be produced on a small acreage. Mushrooms require practically no acreage at all. But the marketplace strictly limits the number of farm operations which can exist on a small acreage, and attain volume production of the crops in which they specialize.

In the area where Bodine Farms is located, relatively few agricultural crops meet the requirements of the farm equation essential to profitable farming. These few crops require sizable acreages to bring the factors within the farm equation into balance.

We believe the acreage restrictions proposed in S. 1867 to be reasonable and realistic. In our opinion, these figures are far more apt to benefit the family farmer and to hold existing farmlands in agricultural use than would lower acreage figures. We urge enactment of these acreage limitations.

An old adage cautions that a silk purse cannot be made from a sow's ear. To this obvious fact, I would add another, equally obvious, "A successful farm operation cannot be accomplished without an adequate land base."

Further, some margin for expansion of land holdings when market forces so dictate should be recognized and accommodated. All of which argues strongly that resolution of any doubt as to exact acreage limitations should be on the upper end of the scale considered necessary to sustain a farm, and not toward the lower end.

The privilege of appearing here today is greatly appreciated. Thank you for the opportunity.

[The prepared statement of Mr. Bodine follows:]

TESTIMONY OF ROY BODINE, REPRESTING EAST GREENACRES IRRIGATION DISTRICT AND BODINE FARMS, ON BILL TO REFORM THE 1902 RECLAMATION ACT (S-1867) AT FIELD HEARING, BOISE, IDAHO ON JANUARY 11, 1982.

My name is Roy Bodine. I appear here today representing the East Greenacres Irrigation District and Bodine Farms of Post Falls, Idaho, the later being a farm enterprise in which I am part owner and a partner with my brother and nephew. Additionally, for the record, let it be noted I am President of the Idaho Water Users Association and in that capacity familiar with the testimony presented in behalf of the Assocation by its Executive Director, Mr. Sherl Chapman. I can and do endorse that testimony and wish to attest its correctness in reflecting the views of Assocation members.

Bodine Farms crops between 1700 and 1800 acres, all of it irrigatable. Approximately a third of the acreage is water serviced by the East Greenacres Irrigation District under contract with the U.S. Bureau of Reclamation. It is our belief that S 1867, if enacted, will solve a troublesome, festering farm problem. The author and sponsors are to be congratulated for their perception and proposed treatment of that problem. Accordingly, we urge enactment of S 1867 as soon as possible.

Respectfully, we wish to suggest some minor changes and/or language additions for consideration. The following detail is in elaboration of these specific points.

1. EQUIVALENCY.... this is an extremely important part of S 1867. It follows that standards and criteria to govern the determinations called for within S 1867 in this matter should be precisely detailed. Included should be all the factors affecting economic feasibility of irrigated agriculture, among them the cost of finding markets for the mix of products which can be profitably porduced in the concerned area.

2. COMINGLING.... should be addressed by S 1867 to make certain those irrigation districts which use only a small amount of water from a Federal reservoir (25% or less) are excluded from application of the acreage limitation.

3. PAY-OUT.... provision should be made in 1867 to accomodate the individual owners who wish to prepay ahead of an established contract to relieve their lands of the acreage limitation.

4. OPTIONAL EXPANDED OWNERSHIP.... contract renegotiation by irrigation districts should not be required for application of Title II in behalf of landowners who wish it. Rather, S 1867 ought to provide a means and method for extension of this privilege directly to individual landowners.

5. ACREAGE LIMITATION.... this is what S 1867 is all about. Its importance dwarfs all other considerations.

Key to successful farming is always, inescapably ... "enough acreage". It is an ever present, absolute requirement and the most important factor in the equation of things necessary to insure continuance of the small family farm ... long and often declared the transcendent objective of farm legislation. Bluntly put, the family farm cannot survive the competition of neighbors unfettered by unrealistic acreage limitations.

The ultimate irony will certainly be reached by enactment, or retention, of acreage limitations that cancel out the very people who are supposed to benefit.

Farming has changed dramatically during the last half century, but the equation factors which produce a profit or a loss remain largely the same. Their relevancy, one to another, and collectively to the end objective of "on-going, profitable operation" is non-disputable.

Acreage must gear to equipment, to manpower, to crop selection, to production practices, to desired product volumes and to markets. The influence of acreage extends across all the factors within the equation. An imbalance of acreage is certain to create out-of-line production costs, less than the desired product volume and, of course, inadequate receipts from the marketplace. A one word summation of the inevitable result under this circumstance is the word "failure" ... the only possible alternative being a part-time operation supported by outside income.

Perhaps I can illustrate the startling extent of change in agricultural practices with a personal reference. Fifty years ago, or thereabouts, by father operated two stationary threshing machines in the Palouse country of eastern Washington. The threshers were powered by straw burning steam engines and each of the units had a complement of 35 men and a somewhat larger number of horses. Each thresher produced between two thousand and twenty five hundred bushels of wheat per 12-hr day. Now a single combine operated by one man does the work of the 70 men and all the horses employed by my father.

Equivalent progress has taken place in irrigation equipment and across the broad front of farm operations. It enables the family farm to manage a much larger acreage. In fact, it compels the family farm to expand its operations to function efficiently and compete with other farmers.

If the avowed intent to perpetuate the family farm is genuinely held, the present 160 acre ownership limitation of the 1902 Reclamation Act must be lifted. Failure to do so, and to adopt reasonable, realistic limitations in replacement, will be counter productive. Matter not the strength of the bond existing between a farmer and his land, the bond will sever under a condition that denies opportunity for profit. The present 160 acre limitation constitutes such a denial. Aftermath of continuing this limitation, or of imposing another that is too low, will be forfeiture of farm land to development or other use. Parenthetically it should perhaps be added that the shrinking farm acreage of this nation is already considered critical and cause for alarm.

There will be differing opinion expressed here and elsewhere as to the exact acreage limitations which should be imposed by S 1867. The farmer who produces grain needs more acreage than does the farmer who produces fruit, operates a dairy or a vineyard. A "god-awful" lot of strawberries can be produced on a small acreage. Mushrooms require practically no acreage at all. But, the marketplace strictly limits the number of farm operations which can exist on a small acreage and attain volume production of the crops in which they specialize.

In the area where Bodine Farms is located relatively few agricultural crops meet the requirements of the farm equation essential to profitable farming. These few crops require sizeable acreages to bring the factors within the farm equation into balance.

We believe the acreage restrictions proposed in S 1867 to be reasonable and realistic. In our opinion these figures are far more apt to benefit the family farmer and to hold existing farm lands in agricultural use than would lower acreage figures. We urge enactment of these acreage limitations.

An old adage cautions that a silk purse cannot be made from a sow's ear. To this obvious fact, I would add another, equally obvious, "a successful farm operation cannot be accomplished without an adequate land base". Further, some margin for expansion of land holdings when market forces so dictate should be recognized and accomodated. All of which argues strongly that resolution of any doubt as to exact acreage limitations should be at the upper end of the scale considered necessary to sustain a farm and not toward the lower end.

The privilege of appearing here today is greatly appreciated. Thank you for the opportunity.

The CHAIRMAN. Thank you, Roy, for you statement. It's an excellent statement, and obviously one that I find myself in strong agreement; hence, I recognize the wisdom in what you have said. I do appreciate very much your statement coming as it does from a man involved in a family corporate operation. I appreciate it very much.

Mr. BODINE. Thank you, Senator.

The CHAIRMAN. Mr. Leigh Chantrill, Newdale, Idaho.

[No response.]

The CHAIRMAN. Mr. Chantrill is not here.

Mr. Dennis Carlson, representing the Idaho Grass Growers Association, Boise.

Mr. CARLSON. Mr. Senator, I am from Post Falls, also. Not from Boise.

The CHAIRMAN. Very good. There is a lot more grass growing up at Post Falls.

Mr. CARLSON. That's correct. There is.

STATEMENT OF DENNIS L. CARLSON, IDAHO GRASS GROWERS ASSOCIATION, POST FALLS, IDAHO

Mr. CARLSON. Mr. Chairman, my name is Dennis L. Carlson, and I am a farmer from Post Falls, Idaho.

I am also executive secretary of the Intermountain Grass Growers Association, but am testifying on my own behalf today.

I farm 550 acres near Post Falls; 300 of the acres are in family ownership with 160 of these acres within the East Greenacres Irrigation District; 250 of these acres are leased, with 125 acres within the Post Falls Irrigation District.

As you can see, I am a relatively small farmer, but am still not in compliance with the limitations set forth in the original Reclamation Act of 1902.

Since 1902, there have been great strides in many fields of endeavor: Men have not only flown, they have walked on the Moon; the atom has not only been studied, its vast energy has been tapped; the people of the United States have faced many challenges and risen to overcome them; agriculture has become one of the most productive industries in our Nation and has afforded our people with an unexcelled blend of high quality and low priced food, which is the envy of every nation on this Earth.

There are, however, areas where our Nation has not kept pace with the changing times and practices. I commend you for your recognition of the Reclamation Act of 1902 as being one of these practices. It is no longer possible for modern agriculture to operate under the same rules that applied in 1902.

The acreage limitations of the 1902 act are obviously too small considering the immense amount of power and capital required to operate even a family sized farm at the present time.

I strongly support your approach to the acreage limitation factor in your modification proposal, Senator McClure.

The expansion of ownership to 1,600 acres, with an additional leaseholding to a total of 3,200 acres is both reasonable and prudent considering the state of modern agriculture and the intent of the original 1902 act which promotes the development of the arid West and the family farm concept.

Commingling of water is another consideration of the act modification that must be dealt with. In my particular farming operation, I have irrigated lands owned and leased that is in two different irrigation districts which fall under Bureau of Reclamation regulations and 245 acres of land which is irrigated through private development.

I hope that you will review any language that appears in the act amendment to ascertain that no hardship will be levied on any farmers in Idaho due to the possible commingling of water from various sources.

I applaud your efforts to modify the 1902 act and realize that many misinformed people actually believe that a family farm can be operated successfully on a limitation of 160 acres.

I sincerely thank you for the opportunity to testify here today concerning this important modification proposal of the 1902 Reclamation Act.

[The prepared statement of Mr. Carlson follows:]

Testimony of Dennis L. Carlson
on modification of the 1902 Reclamation Act.
Boise, Idaho January 11, 1982

Mr. Chairman:

My name is Dennis L. Carlson and I am a farmer from Post Falls, Idaho. I am also Executive Secretary of the Intermountain Grass Growers Association but am testifying on my own behalf today. I farm 550 acres near Post Falls. 300 of the acres are in family ownership with 160 of these acres within the East Greenacres Irrigation District. 250 of these acres are leased with 125 acres within the Post Falls Irrigation District. As you can see, I am a relatively small farmer but am still not in compliance with the limitations set forth in the Reclamation Act of 1902.

Since 1902 there have been great strides in many fields of endeavor: men have not only flown, they have walked on the moon; the atom has not only been studied, its vast energy has been tapped; the people of the United States have faced many challenges and risen to overcome them; agriculture has become one of the most productive industries in our nation and has afforded our people with an unexcelled blend of high quality and low priced food which is the envy of every nation on this earth.

There are, however, areas where our nation has not kept pace with the changing times and practices. I commend you for your recognition of the Reclamation Act of 1902 as being one of these practices. It is no longer possible for modern agriculture to operate under the same rules that applied in 1902.

The acreage limitations of the 1902 Act are obviously too small considering the immense amount of power and capital required to operate even a family-sized farm at the present time. I strongly support your approach to the acreage limitation factor in your modification proposal, Senator McClure. The expansion of ownership to 1600 acres and an additional lease holding to a total of 3200 acres is both reasonable and prudent considering the state of modern agriculture and the intent of the original 1902 Act which promotes the development of the arid west and the family farm concept.

Comingling of water is another consideration of the act modification that must be dealt with. In my particular farming operation, I have irrigated land owned and leased that is in two different irrigation districts which fall under Bureau of Reclamation regulations and 245 acres of land which is irrigated through private development. I hope that you will review any language that appears in the Act amendment to ascertain that no hardship will be levied on any farmers in Idaho due to the possible comingling of water from various sources.

I applaud your efforts to modify the 1902 Act and realize that many misinformed people actually believe that a family farm can be operated successfully on a limitation of 160 acres.

I sincerely thank you for the opportunity to testify here today concerning this important modification proposal of the 1902 Reclamation Act.

Dennis L. Carlson

Dennis L. Carlson
E. 2375 Mullan Ave.
Post Falls, ID 83854

The CHAIRMAN. Thank you very much. I appreciate your statement.

You and several others have referred to the issue of commingled water.

Mr CARLSON. Yes.

The CHAIRMAN. I would want the record to reflect that it is my intention, and I think it is the intention of the members of the other cosponsors of the legislation, that section 2(b) of the bill, which appears on page 2 of the bill, is intended to address that question directly by stating that the irrigation water that we are talking about is that water which is contracted for and made available to the recipient as a result of that contract.

Mr. CARLSON. OK.

The CHAIRMAN. It is very difficult to write language that is not ambiguous. I appreciate the suggestions that have been made. It has been our intention to address that question, but it hasn't been adequately addressed. We will attempt to make further attempts to do so.

Mr. CARLSON. Thank you, Senator.

The CHAIRMAN. Yes, sir. Thank you very much.

Mr. Dick Oneida, Big Wood Canal Co., Shoshone, Idaho.

STATEMENT OF RICHARD ONEIDA, MANAGER, BIG WOOD CANAL CO. AND THE AMERICAN FALLS RESERVOIR DISTRICT NO. 2.

Mr. ONEIDA. Mr. Chairman, my name is Richard Oneida. I am the manager of the Big Wood Canal Co. and American Falls Reservoir District No. 2.

In our project, we have approximately 98,000 acres. Approximately 61,000 of these acres receive water under contract with the Bureau of Reclamation.

I am here today on behalf of the water users in my district. We would like to commend Mr. Chapman on his very fine testimony before the Senate Energy and Natural Resources Committee. We endorse his testimony and stand behind him 100 percent.

There is nothing I could add to this testimony, but there are a few points that I would like to stress.

No. 1 is residency. Why should a landowner or operator be required to live on or near their land? No other businessman is required to do so. If a farmer who has worked hard all his life decides to retire and move to a different location, must he sell his land to do so?

Or if a son established in a business of his own inherits the family farm, should he be required to sell his business and move to the farm in order to hold the land? We don't think so.

PUBLIC CORPORATIONS

We feel that ownership of project land by public corporations should be restricted.

PAYOUT

We feel if an individual would like to repay his obligation to the Federal Government on an escalated basis or lump sum, he should be allowed to do so.

ACREAGE LIMITATION

When the 1902 Reclamation Act was enacted, the 160-acre limitation was adequate. But due to the changing times, farming methods, economics, and lower margin of profit, it has become outdated. If a progressive farmer is to continue a successful operation, he must be allowed to expand and progress as his initiative and efficiency dictates.

Thank you very much.

[The prepared statement of Mr. Oneida follows:]

STATEMENT OF RICHARD ONEIDA, MANAGER, BIG WOOD CANAL CO., AND THE AMERICAN FALLS RESERVOIR DISTRICT NO. 2

Mr. Chairman, my name is Richard Oneida. I am manager of the Big Wood Canal Company and American Falls Reservoir District No. 2. In our project we have approximately 98,000 acres. Approximately 61,000 of these acres receive water under contract with the Bureau of Reclamation. I am here today on behalf of the water users in my district. We would like to commend Mr. Chapman on his very fine testimony before the Senate Energy and Natural Resources Committee. We endorse his testimony and stand behind him 100 percent.

1. Residency: Why should a land owner or operator be required to live on or near their land? No other businessman is required to do so. If a farmer who has worked hard all his life decides to retire and move to a different location must he sell his

land to do so? Or if a son established in his own business inherits the family farm should he be required to sell his business and move to the farm in order to hold the land? I don't think so.

2. Public corporation: We feel that ownership of project land by public corporation should be restricted.

3. Payout: We feel if an individual would like to repay his obligation to the Federal Government on an accelerated basis or lump sum he should be allowed to do so.

4. Acreage limitation: When the 1902 Reclamation Act was enacted, the 160 acre limitation was adequate, but due to the changing times, farming methods, economics, and lower margin of profit, it has become outdated. If a progressive farmer is to continue a successful operation, he must be allowed to expand and progress as his initiative and efficiency dictates.

The CHAIRMAN. Thank you very much for your testimony.

Mr. Nicholas Benton, National Democratic Policy Committee of New York. Is Mr. Benton here?

[No response.]

The CHAIRMAN. We will pass over to Mike Mogensen, Idaho Cattlemen's Association, Boise, Idaho.

STATEMENT OF MIKE MOGENSEN, EXECUTIVE VICE PRESIDENT IDAHO CATTLEMEN'S ASSOCIATION, BOISE, IDAHO

Mr. MOGENSEN. Senator McClure, welcome back to Boise and Idaho.

The CHAIRMAN. Thank you.

Mr. MOGENSEN. We greatly appreciate your efforts on this legislation, as the other legislation you do on our behalf.

I just have a brief statement to read on the legislation, and will not take a whole lot of your time.

Senator McClure, on behalf of the Idaho Cattlemen's Association we express our support and congratulations to you for sponsoring legislation to amend the 1902 Reclamation Act, to increase the acreage limitation for farmers using water from Federal projects.

It is extremely important to increase the acreage limitation up to 3,200 acres, and even higher if possible. The 160-acre limitation is obsolete, and must receive approval by Congress to allow U.S. agriculture to continue as the world's leading food producer.

Additional comments of support for your bill, Mr. Chairman: No. 1 applies to the residency requirement. We support your efforts to amend the 1902 reclamation law allowing that farmers no longer have to live within a certain mileage limitation or certain mileage of their land holdings.

We also support your provision on equivalency whereby a farmer may own larger amounts of less than class 1 soils at equal or equivalent production capacity.

So these two provisions add greatly to your bill.

Approval of this legislation will continue to strengthen America's agriculture which has been threatened on many fronts, and we must receive swift approval of this legislation.

We thank you, Senator McClure, and your staff, for preparing this legislation and offer our support in any way possible in the future on this bill.

Thank you.

[The prepared statement of Mr. Mogensen follows:]

IDAHO CATTLEMEN'S ASSOCIATION

MIKE MOGENSEN, Executive Vice President

OFFICERS
PRESIDENT
David Bivens . . . . Payette
VICE PRESIDENTS
Tom Prescott . . . . Jerome
Blair Fisher . . . . Rexburg

December 29, 1981

Senator James McClure
3121 Dirksen Building
Washington, D.C. 20510

Dear Senator McClure,

On behalf of the Idaho Cattlemen's Association we express our support and congratulations to you for sponsoring legislation to amend the 1902 Reclamation Act, to increase the acreage limitation for farmers using water from federal projects.

It is extremely important to increase the acreage limitation up to 3,200 acres and even higher if possible. The 160 acre limitation is obsolete and must receive approval by Congress to allow U.S. agriculture to continue as the worlds' leading food producer.

We compliment you for scheduling your committee hearing in Boise, January 11, 1982. Please let us know if we can assist you further on this legislation. The ICA would be willing to provide supportive testimony at your Boise hearing if it would be helpful.

Sincerely,

Mike Mogensen
Executive Vice President

MM/lkc
cc: Idaho Congressional Delegation

bc - Officers
Don Heckman
M. Iloch -

2120 AIRPORT WAY • BOISE, IDAHO 83705 • PHONE (208) 344-9482

The CHAIRMAN. Thank you very much. I appreciate your comments and support of the legislation.

Mr. Jerry Callen, Jerome, Idaho.

A VOICE. He hasn't arrived yet.

The CHAIRMAN. We will catch him later then.

Mr. Jim Jones, Jerome, Idaho.

STATEMENT OF JAMES T. JONES, JONES LIVESTOCK FEEDING CO., JEROME, IDAHO

Mr. JONES. Mr. Chairman, my name is Jim Jones, and I am from Jerome, Idaho. I appear here on behalf of Jones Livestock Feeding Co., which has a farming operation in Jerome County.

First of all, Senator, let me commend you for holding this field hearing here in Boise to give local people and water users, local farmers and water users the opportunity to be heard, because these are the people that are most affected by this legislation.

As you are aware, Senator, an update of the 1902 act is absolutely necessary in order to reflect the present day realities in the farming business.

When the act was passed in 1902, the average-sized farm was probably quite a bit less than 160-acres. However, with ever-increasing capital costs and operating expenses over the last 80 years, farmers have had to become more efficient and have had to significantly expand their operations in order to make ends meet. The 160-acre limitation is clearly no longer realistic. It is time that the acreage limitation was substantially increased in order to reflect present day economics in the farming business.

I am a practicing attorney in Jerome, and I have operated a law office there for the last 8 years. And in that time, I have represented many farmers who receive water from the North Side Canal Co. at Jerome.

In addition, I have been involved in a family farming operation in Jerome County practically all of my life. Presently, that company is named Jones Livestock Feeding Co.

Our canal company at Jerome is listed as having somewhere around 11,000 acres of excess lands, but practically all of those acres are farmed by local families. Some of the families have chosen to incorporate their operations, like we have, for improved management where several family members are involved, but there are no conglomerate corporations which own or operate land in our area.

The objective of encouraging family farms would certainly not be frustrated in Jerome County by passage of legislation such as S. 1867, which would, among other things, substantially increase the acreage limitation.

The increase in the limitation provided for under section 203 is realistic and supportable. The maximum of 1,600 acres of owned class 1 lands may not be as much as some would want, but it is certainly a vast improvement. In most instances, it will leave room for continued increases in efficiency in our farming industry in Idaho.

The removal of the residency requirement under section 101 is well advised. Many of us thought that the residency requirement had been repealed by the Omnibus Adjustment Act in 1926, and I still believe that to be the case despite a contrary Federal court ruling in 1972.

It would be extremely unfair to continue the residency requirement since many people acquired land in good faith assuming that there was no longer a residency requirement. This assumption was supported for many years by the Interior Department. With present day mobility, it does not make much sense to have this type of restriction in the act.

The equivalency language found in section 102 of the bill is also well founded. There is good reason to take into account the economic effects of different soil and growing conditions.

Section 108 providing for validation of contracts and written representations is essential, especially in light of the prepayment provisions which many irrigation districts were supposed to have, at least before the Tulare Lake and Imperial irrigation cases were decided, and I have the citations for those in my statement.

The validation provision would basically cure the mischief cause by those decisions which declared prepayment privileges and provisions to be invalid.

One suggested change which I think is necessary has to do with section 202. I would think that we ought to figure out a mechanism to make the amendment of contracts automatic instead of optional at the request of a non-Federal party. This would greatly simplify administration of the amended act.

Again, Mr. Chairman, you and your committee are to be commended for holding field hearing. And you are particularly to be commended for this worthwhile piece of legislation. I appreciate the opportunity to testify here today.

Hopefully, this legislation can be quickly enacted, because I believe it is absolutely vital to the interests of farmers in Idaho and throughout the Nation, and it will also benefit consumers by aiding initiative and efficiency in our farming industry.

Thanks, Mr. Chairman.

[The prepared statement of Mr. Jones follows:]

SEELEY, JONES & FULLER

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TESTIMONY OF JAMES, T. JONES, ATTORNEY AT LAW TO THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
REGARDING
MODIFICATION OF THE 1902 RECLAMATION ACT
JANUARY 11, 1982

Mr. Chairman:

You and your Committee are to be commended for holding this field hearing in Boise on legislation to up-date the 1902 Reclamation Act. This allows much greater input on this most important legislation from local farmers and water-users. As you are aware, Senator, an up-date of the 1902 Act is absolutely necessary in order to reflect present-day realities in the farming buisness.

When the Act was passed in 1902, the average-sized farm would have been less than 160 acres. However, with ever-increasing capital costs and operating expenses over the last 80 years, farmers have had to become more efficient and have had to significantly expand their operations in order to make ends meet. The 160 acre limitation is clearly no longer realistic. It is time that the acreage was substantially increased in order to reflect present-day economics in the farming business.

I am a practicing attorney and have operated a law office in Jerome for the last eight years. In that time I have represented many farmers who receive water from the North Side Canal Company at Jerome. In addition, I have been involved in a family farming operation in Jerome County practically all of my life. Our canal company at Jerome is listed as having somewhat around 11,000 acres of excess lands but practically all of those acres are farmed by local families. Some of the families have chosen to incorporate their operations for improved management where several family members are involved, but there are no "conglomerate corporations" which own or operate land in our area. The purpose of the 1902 Act - to encourage family farms - would certainly not be frustrated in Jerome County by passage of legislation, such as S.1867, which would among other things, substantially increase the acreage limitation.

The increase in the limitation provided for under Section 203 is realistic and supportable. The maximum of 1600 acres of owned Class I lands may not be as much as some would want, but it is certainly a vast improvement. In most instances it will leave room for continued increases in efficiency in our farming industry in Idaho.

The removal of the residency requirement under Section 101 is well advised. Many of us thought that the residency requirement had been repealed by the Omnibus Adjustment Act in 1926 and I still believe that to be the case despite a contrary Federal Court ruling in 1972. It would be extremely unfair to continue a residency requirement since many people acquired land in good faith assuming that there was no longer a residency requirement. This assumption was supported for many years by the Interior Department. With present day mobility it does not make much sense to have this type of restriction in the Act.

The equivalency language under Section 102 of the Bill is also well founded. There is good reason to take into account the economic effects of differing soil and growing conditions.

Section 108 providing for validation of contracts and written representations is essential, especially in light of the pre-payment provisions which many irrigation districts were supposed to have, at least before the Tulare Lake and Imperial Irrigation cases (535F.2d 1093 and 559F.2d509) were decided. The validation provision would basically cure the mischief caused by those decisions which declared prepayment provisions to be invalid.

One suggested change which I think is necessary has to do with Section 202. I would think that the amendment of contracts ought to be automatic instead of optional at the request of the non-Federal party. This would greatly simplify administration of the amended Act.

Again, Mr. Chairman, you and your Committee are to be commended for holding this field hearing.You are particularly to be commended for this worthwhile piece of legislation. I appreciate the opportunity to testify here today. Hopefully, this legislation can be quickly enacted because it is vital to the interests of farmers in Idaho and throughout the Nation and it will also benefit consumers by aiding initiative and efficiency in our farming industry.

The CHAIRMAN. Thank you very much, Jim.

I recognize the desirability, as you have stated, of making the acreage limitation provisions automatic rather than requiring the amendment of contracts. I am concerned about the provision of the Constitution that guarantees the sanctity of property in stating that no property can be taken without compensation. I am uncertain as to how we can accomplish the objective which you stated, which I support in view of that limitation. I would look forward to any advice or suggestions which you might have in that regard.

Mr. JONES. Senator, I am in the process of trying to draft some language that would be acceptable and would be constitutional. I would like to submit that to the committee.

The CHAIRMAN. If you would do so, I would welcome it.

Mr. JONES. Thank you.

The CHAIRMAN. Do I understand that you appear instead of Mr. Scott?

Mr. JONES. Yes. It is my understanding that Mr. Scott is snowed in, and can't get out from Wendell today.

The CHAIRMAN. All right. And will Mr. Diehl also appear representing the North Side Canal Co.?

Mr. JONES. Senator, I saw him here just a minute ago.

The CHAIRMAN. He is just outside the door. I will call his name when we get to him.

Mr. JONES. OK. In fact, I see him peeking in right now.

The CHAIRMAN. Thank you very much.

Mr. Gerwin Woodland, Reservoir Land Co., Jerome.

Mr. WOODLAND. Senator McClure, I didn't know I was supposed to have this all written out

The CHAIRMAN. Go right ahead.

STATEMENT OF GERWIN WOODLAND, RESERVOIR LAND CO., JEROME, IDAHO

Mr. WOODLAND. I represent Reservoir Land Co., in Jerome. We have a farm there of 2,500 acres.

We have 1,843 shares of North Side Canal Co. We are a corporation. We bought this farm back in 1972, and at that time, we went to the North Side Canal Co. office, and they assured us that our water rights were good, and that there was no problem with them.

And then later on, we heard that there was this 160-acre limitation. We hadn't heard about that at the time we purchased the corporation. But again, they assured us that there were things in the contract where we could prepay our water if there were problems. And also, that the 160 acres wasn't supposed to apply.

We find out now that it does, and we support your bill in trying to update this water situation; 1,600 acres will help us a long ways more than 160 or 320.

We appreciate the opportunity of testifying here before you today on the problems that we see. There are 12 of us in the corporation. All of my partners are in California, except myself. I am the manager, and one of the owners.

We support you in this thing, and we hope that you will push it through and help us in every way that you can. I am sorry that I didn't have something written out. I didn't realize that I was supposed to have.

The **Chairman**. That's fine. A written statement is not necessary. You have made your point very well, and I appreciate it.

I take it that you are a corporation and there are 12 shareholders, and the provisions of title II will take care of that as a qualified recipient.

Mr. **Woodland**. OK.

The **Chairman**. I thank you for your statement.

Mr. **Woodland**. Thank you.

The **Chairman**. Mr. Ralph Peters of Jerome. Mr. Peters is not here at this time?

A **Voice**. He will be here, Senator.

The **Chairman**. OK. We will call him when he arrives.

Mr. LaVerne Schroeder, S & L Ranch Corp., Bliss.

I think Mr. Schroeder was one of the first here today.

You may proceed, Mr. Schroeder.

STATEMENT OF LaVERNE SCHROEDER, S & L RANCH CORP., BLISS, IDAHO

Mr **Schroeder**. Mr. Chairman, before I read my testimony, my name is LaVerne Schroeder from Bliss, Idaho. My family and I own a farm and livestock operation.

My family decided that I should testify on a personal basis for the 1902 Reclamation Act, that as it stands, it would have a disastrous effect on our personal lives and this family.

Mr. Chairman and parties concerned:

In my testimony, I would like to explain how the 1902 Reclamation Act will affect our family operation if it is not brought up to date.

We have a subchaper S corporation. Involved is my wife, son, daughter, son-in-law, and myself. We farm 600 acres.

Our reasons for maintaining a corporation is estate planning, stock transfers, and buy-sell agreements in the bylaws to protect the future continuation of this family farm.

Now, according to the 1902 act, our corporation is treated as one entity, and is entitled to own 160 acres of irrigated land. To comply with the 1902 act, we would have to dissolve our corporation, and the following hardships would emerge:

The taxes due upon dissolving the corporation would be disastrous;

My wife and I would have to sell the acres over our allowable limit. With the sprinkler systems, buried mainlines, and design of our operation, to divide this farm into separate ownerships would not be economical to operate for the parties concerned thereafter;

To dissolve the corporation would also dissolve the vehicle for estate planning, and destroy the dreams this family has set forth for future years.

Our lawmakers in Washington have continuously updated the laws that affect our society in America today, but yet the 1902 Reclamation Act has escaped major changes that are beneficial to agriculture today.

I commend Senator McClure and his cosponsors on the introduction of S. 1867 for it contains amendments and supplements that modify the 1902 act as a workable law in unison with agriculture today.

My family and I thank you for allowing me to testify here today, and we sincerely hope that immediate action will be taken upon passage of the legislation of S. 1867.

[The prepared statement of Mr. Schroeder follows:]

Jan.11, 1982

Mr. Chairman and parties concerned:

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Sincerly,

LaVerne Schroeder

Star Route
Bliss, Idaho
83314

The **Chairman**. Thank you, Mr. Schroeder.

Mr. **Schroeder**. Thank you.

The **Chairman**. I appreciate your testimony very much. This is precisely the kind of condition that does exist throughout the West and the kind of situation we want to correct. Thank you.

Mr. **Schroeder**. Thank you.

The **Chairman**. Mr. Dick Marshall of Jerome.

You may proceed.

Mr. **Marshall**. Senator McClure, I would like to say at this time that my father Charlie will not make it here, and is unable to attend.

The **Chairman**. All right.

Mr. **Marshall**. He will submit written testimony, though, Senator.

The **Chairman**. We will receive his written testimony, and it will be made a part of the record when received.

Mr. **Marshall**. Thank you.

STATEMENT OF JOHN R. MARSHALL, JEROME, IDAHO

Mr. **Marshall**. My name is John R. Dick Marshall, and I have been actively engaged in farming since 1955. My wife and I own a farm which was incorporated when we bought it, and remains as such today.

From what I understand of the present law, this would only entitle my wife and I to 160 acres. The farm that we own has 400 acres, so this has considerable worry at home ever since the Secretary of the Interior threatened to enforce this unrealistic law back in 1977.

This 400 acre farm has been operated as a single unit for at least 40 years, probably longer. To break this up into smaller units is economic madness.

Over the past few years, I have had some neighbors that approached me with the idea that they would like to incorporate the family farm. I advised them that they should approach such a move with caution until the problem with this 1902 Reclamation Act has been resolved.

Congress has been trying to work out a reasonable solution to this problem since 1977, without much success.

My own feelings on why Congress has failed is that the previous bills that were introduced did not solve everybody's problem, but just certain States' problems. No legislation is going to be passed unless it solves the major problems of all parties concerned.

S. 1867 seems to be the type of legislation that does solve most of the problems of the Western States concerning the modernization of the 1902 Reclamation Act. I would like to commend you and your colleagues on the introduction of this bill, and do hope that immediate attention is given to get this legislation passed through the Senate.

I would like to comment on a few areas of the bill. I feel that the title I and the title II approach in S. 1867 is an excellent idea, as this is a complex problem and this approach solves those conditions that vary from State to State.

The residency requirement being repealed is excellent as it solves some important problems of my neighbors.

The equivalency section is a good idea as classes of land vary considerably from State to State on the types and quantity of crop that can be raised, and some method of equalization needs to be considered.

There are many other excellent parts of the bill that I will not go into as time does not permit.

One area of concern to me is section 202 which has the title Amendments of Contracts. This is certainly one approach of how these existing contracts could be amended, but it seems to be rather a cumbersome and expensive one.

My suggestion would be to include in your bill that language that would automatically amend all existing contracts to comply with whatever facts and figures are finally enacted into law. This suggestion would only apply where it is practical.

In closing, I would like to say that farming is a wonderful life. I now have two sons that have returned home after graduation from college to take up farming. I do hope that you can give my sons the same opportunity of unrestrictive farming as I had when I graduated from college some 20 years ago.

I thank you for the opportunity of testifying here today, and do hope that both the Senate and the House will give this problem their immediate attention as I understand that enforcement of this antiquated law is forthcoming.

Thank you.

[The prepared statement of Mr. Marshall follows:]

To The Honorable Senator Jim McClure
Reason: S. 1867, The Modernizing of the 1902 Reclamation Act

Dear Senator McClure:

My name is John R. Marshall and I have been actively engaged in farming since 1955. My wife and I own a farm which was incorporated when we bought it and remains as such today. From what I understand of the present law this would only entitle my wife and I to 160 acres. The farm that we own has 400 acres so this has caused us considerable worry at home ever since the Secretary of the Interior threatened to enforce this unrealistic law back in 1977.

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Over the past few years I have had some neighbors that approached me with the idea that they would like to incorporate the family farm. I advised them that they should approach such a move with caution until the problem with this 1902 Reclamation Act has been resolved. Congress has been trying to work out a reasonable solution to this problem since 1977, without much success. My own feelings on why Congress has failed is that the previous bills that were introduced did not solve everybody's problem but just certain state's problems. No legislation is going to be passed unless it solves the major problems of all parties concerned.

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I thank you for the opportunity of testifying here today and do hope that both the Senate and the House will give this problem their immediate attention as I understand that enforcement of this antiquated law is forthcoming.

Sincerely,

John R. Marshall

The CHAIRMAN. Thank you very much for your statement.

Mr. Marshall, you mentioned the residency requirement, and its important problems for your neighbors. Great fear has been expressed by many people that repeal of the residency requirement might open the door to nonresident farm ownership. These neighbors that you are referring to, are they residents of Idaho?

Mr. MARSHALL. Yes, they are.

The CHAIRMAN. Involved in farming?

Mr. MARSHALL. I would think, you know, mainly I was thinking of myself. I want to retire someday, and maybe want to move where it is a little warmer. A person should be able to do so, and this is what has been my concern in that line of thinking.

The CHAIRMAN. Yes, sir. Thank you very much for your statement. I appreciate it.

Mr. Ted Diehl, North Side Canal Co.

Ted, welcome before the committee.

Mr. DIEHL. Thank you, Senator.

STATEMENT OF TED DIEHL, NORTH SIDE CANAL CO., JEROME, IDAHO

Mr. DIEHL. I don't have much to testify to today. As you know, I have already done it 8 or 10 times, and it's already in the record.

The CHAIRMAN. Well, we hope that you don't have to do it 8 or 10 times more before we finally produce the result.

Mr. DIEHL. That's what I wanted to testify about.

The CHAIRMAN. Yes, sir.

Mr. DIEHL. My name is Ted Diehl. I am the manager of the North Side Canal Co., Jerome, Idaho. Our company is a Carey Act reclamation company that delivers irrigation water to landowner-stockholders in portions of Jerome, Gooding, and Elmore Counties in Idaho. We serve approximately 160,000 acres of irrigated land. Our storage water comes from Federal reservoirs, and we are affected by the 1902 Reclamation Act by contract or court decisions.

I have been testifying for 5 years trying to persuade Congress to amend the 1902 Reclamation Act. I know it has been very difficult to satisfy all the Western States concerned.

I would like to commend you and your colleagues on S. 1867. I think S. 1867 should solve most concerns of western irrigators.

I approve of repealing the residency requirement. This will help my district greatly, because retired farmers who move elsewhere will not be required to sell their farms.

Your acre limitation will satisfy my landowner-stockholders. Somewhere I have read some publication figures that Idaho has more excess acres than any Western State, and that the North Side Canal Co. is one of the worst offenders.

This is hard for me to believe when most of our excess land falls between 10 and 80 acres in excess per violation. We have no large corporations in our district—only family corporations and individual farmers.

Every year I report to the Bureau of Reclamation landowner-stockholders that have excess acres under the present law, and the names and figures have varied very little over the past 13 years.

I would like also to speak to section 202 of your bill. As manager of a canal company, it would be much cleaner to have whatever law that is finally enacted to automatically amend all contracts to whatever facts and figures that are law.

Again, I urge you and your colleagues in Congress to push ahead to amend the 1902 Reclamation Act. The time has come for some action. I solicit your help in pushing Senate bill 1867 in Congress for passage.

I want to thank you very much for your efforts that you have given us in the past.

[The prepared statement of Mr. Diehl follows:]

TED DIEHL, GENERAL MANAGER
BERNICE JOHNSON, SEC'Y-TREAS.

NORTH SIDE CANAL COMPANY
921 NORTH LINCOLN AVENUE
PHONE 324-2319 — 324-2310
JEROME, IDAHO 83338

Before the Senate Engergy and Natural
Resource Committee

Senator James McClure, Chairman

Mr. Chairman:

My name is Ted Diehl. I am the manager of the North Side Canal Company, Jerome, Idaho. Our Company is a Carey Act reclamation company that delivers irrigation water to landowner stockholders in portions of Jerome, Gooding and Elmore Counties in Idaho. We serve approximately 160,000 acres irrigated land. Our storage water comes from Federal Reservoirs and we are affected by the 1902 Reclamation Act by contract or court decisions.

I have been testifying for five years trying to persuade Congress to amend the 1902 Reclamation Act. I know it has been very difficult to satisfy all the Western States concerns. I would like to commend you and your colleagues on S. 1867. I think S. 1867 should solve most concerns of western irrigators. I approve of repealing the residency requirement. This will help my district greatly because retired farmers who move elsewhere will not be required to sell their farms. Your acre limitation will satisfy my landowner-stockholders. Somewhere I have read some published figures that Idaho has more excess acres than any Western State and that the North Side Canal Caompany is one of the worse offenders. This is hard for me to believe when most of our excesp acres falls between ten and eighty acres in excess per violation. We have no large corporations in our district, only family corporations and individual farmers. Every year I report to the Bureau of Reclamation, landowner-stockholders that have excess acres under the present law and the names and figures have varied very little over the past thirteen years.

I would like to speak to Sec. 202 of your bill. As a manager of a Canal Company it would be much cleaner to have whatever law that is finally enacted to authomatically amend all contracts to whatever facts and figures that are law.

Again I urge you and your colleagues in Congress to push ahead to amend the 1902 Reclamation Act. The time has come for some action. I solicite your help in pushing S.1867 in Congress for passage. I want to thank you for your efforts to eliminate a problem for western farmers.

Respectfully submitted

Ted Diehl

The CHAIRMAN. Thank you very much. I hope the next time you appear before the committee you will be testifying about something else. [Laughter.]

The CHAIRMAN. We do sincerely hope to pass some legislation this year. And from what I understand of the discussions going on in the House of Representatives, the Lujan bill, or something like the Lujan bill, has a chance of passage in the House, and it's substantially similar to the bill that we have introduced in the Senate. So I am hopeful that we will get something done this year.

Mr. DIEHL. Well, I am, too, Senator. We have been that way for 5 years now.

The CHAIRMAN. Hope springs eternal.

Mr. Don McFarland, McFarland Agricultural Co., Eden.

Mr. DIEHL. All of those guys are coming together. I don't think they have arrived yet.

The CHAIRMAN. OK. Mr. John W. Baird, Baird & White, representing Quincy Irrigation District and Washington State Water Resources Association.

Mr. Baird, it is nice to have you.

STATEMENT OF JOHN W. BAIRD, QUINCY-COLUMBIA BASIN IRRIGATION DISTRICT, QUINCY, WASH.

Mr. **Baird.** I am pleased to have this opportunity to appear before this committee.

My law firm has represented the Quincy District in the State of Washington, one of the three districts of the Columbia Basin projects, since 1952.

The Quincy district delivers water to approximately 250,000 acres, out of the Columbia Basin project of 600,000 acres of irrigable land.

In addition to my representation of the Quincy district, I am a member of the legislative committee of the Washington State Water Resources Association, which met last Wednesday, and passed a resolution strongly endorsing the modernization of the 1902 act.

The particular association represents the 90 irrigation districts within the State of Washington.

With respect to the 1902 act, which was passed in 1902, it appears to me that we have been objecting to changes since 1903. And certainly the time is now ripe to do that.

Obviously, of course, it is impossible to satisfy the wishes of all landowners, of those involved in reclamation law. And it is impossible to do it in one bill.

We substantially endorse the provisions of S. 1867 with some modification, which I would just like to summarize briefly. You will notice, I believe, that the comments I am going to make substantially concur with those of the Secretary of the Interior. We are not trying to curry any favor with Mr. Watt, but we just happen to agree with some of his comments.

Most of the landowners in the State of Washington would be very happy to an increase of the ownership limitation to 960 acres. There would certainly be no objection to 1,280.

There is some concern about an increase to 1,600 acres, which would not be in keeping with the historic family farm concept of reclamation law.

Payment of full cost of water over and above the 960 or 1,280 appears to be a new concept and novel to reclamation law. However, it is believed that it does grant a degree of flexibility over and above the ownership, the expanded ownership limitation. There are two ways to look at that.

Obviously, of course, the full cost of water depends upon the interest rate utilized.

Now, if you are looking solely at additional flexibility over and above the ownership limitation, why, the lowest interest rate possible would be in order.

However, if you are looking at the full cost of water over and above expanded ownership as effective constraint, I guess then limited leasing, why, then, the higher rate of interest would be preferable.

As to the title I and title II approach, again, we believe that a single self-enacting expanded ownership would be preferable to the two track approach.

I am very much aware of your concern, Mr. Chairman, of the self-enacting theory, because of the constitutional problems. I think it's one thing to be in favor of accepting an act passed by Congress, I think you might be admitting that Congress could pass an act impairing your contract to a detriment. And I think by accepting a self-enacting benefit, we might be admitting that Congress could pass an act which would be a detriment to us. However, this has been done in the past.

I want to call to your attention the act that was passed by Congress quite a few years ago which permitted a surviving spouse, assuming the husband and wife had 320 acres, upon death of a spouse, which is not contained in the 1902 act, the surviving spouse is permitted to retain 320 acres until her death or remarriage.

Now, that was a benefit that was self-enacting, and has never been contested.

In our particular case, a self-enacting increase to 960 could be attacked by those who are opposed to any increase, so that problem does exist.

There was a young lawyer over here who was going to do some drafting, and I am going to do the same thing, and get it to your staff.

The CHAIRMAN. I would certainly appreciate that. Thank you.

Mr. BAIRD. Insofar as equivalency, in the event of the increase to 960, 1,280, or 1,600, we do not believe the equivalency is necessary.

However, in those areas with short growing seasons, it certainly is supported.

Insofar as the elimination of the ownership limitations upon payout of a district's construction cost obligation, those contracts should be honored. We are concerned about prepayment.

However, I doubt seriously if an irrigation district as a district is going to prepay any of its construction costs obligation, which is interest free. It is not going to go out and borrow money at 12 and 14 percent to pay off an interest free obligation.

Insofar as leasing requirements, that is going to cause administrative problems to districts. Perhaps it is a price that we are going to have to pay to secure the benefits of this proposed legislation.

I did suggest in my written statement that perhaps leases for more than 10 years, arm's length bona fide leases in the case of perennial crops could be permitted if approved by the Secretary.

I have a real problem on the definition of an individual, which is contained in, I believe, 201(a) of S. 1867.

S. 1867 refers to an individual as any natural person, including his or her spouse, and including other dependents within the meaning of the Internal Revenue Code (26 U.S.C. 152). That particular code provision of the Internal Revenue Code, Mr. Chairman, has probably given taxpayers and the IRS more problems than any other existing provision in the code.

I have attached to my statement a full copy of section 152. I think if you and staff members read that, and analyze, and anticipate the problems that are going to be placed upon the Bureau of Reclamation and an irrigation district in trying to enforce that, and then when you read it with the rules and regulations, which have been promulgated by the Internal Revenue Service, and try to impose that upon irrigation districts, it really creates quite a burden.

Therefore, I have suggested that the term "individual" would mean any natural person, including his or her spouse, and including dependent children under the age of 18 years.

Now, coming down on the plane yesterday, I modified that. I don't have it typed. I would like to read it as it is very short.

The CHAIRMAN. Sure.

Mr. BAIRD. The reason I have done it is because to try and correct the live-in situation. The live-in situation could perhaps be considered as opposed to public policy, whereas a married couple that own 960 or 1,280 acres, but then two individuals who are not married, but living together could own 960, 1,280, 1,600 acres.

I know that 38 years ago, despite my best efforts, I was unable to get a certain young blonde girl to share my place of abode before I married her; therefore, I married her and I think everybody else should have the same problem.

My definition of individual is, the term "individual" means any natural person, including his or her spouse, and dependent children under the age of 18 years, and further including any person unrelated to an individual who has as his or her principal place of abode, the home of the individual.

Mr. Chairman, I believe S. 1867, as hopefully modified by at least some of the comments I have made would constitute an extreme satisfactory modernization of the law insofar as 98 perent of our farmers in the State of Washington are concerned.

[The prepared statement of Mr. Baird follows:]

QUINCY-COLUMBIA BASIN IRRIGATION DISTRICT
TELEPHONE 787-2316 • POST OFFICE BOX 188
QUINCY, WASHINGTON 98848

January 11, 1982

The Honorable James A. McClure, Chairman
Senate Committee on Energy and Natural Resources

Dear Senator McClure:

In re: Boise, Idaho Hearing on S.1867 - Proposed Modernization of the Reclamation Act of 1902

The undersigned is the Secretary-Attorney of the Quincy-Columbia Basin Irrigation District. The Board of Directors of the Quincy District is most pleased to have this opportunity to present to you its views on S.1867, which bill appears to be a constructive effort to accomplish a long overdue reform of the Reclamation Act of 1902.

The undersigned is also a member of the Legislative Committee of the Washington State Water Resources Association, an organization which represents over ninety irrigation districts organized and existing within the State of Washington. On Wednesday, January 6, 1982, said Legislative Committee passed a resolution strongly supporting the modernization of the 1902 Reclamation Act. Without question, it is an appropriate time to update reclamation law to recognize current farming practices and current economic and financial conditions.

Obviously, it is impossible to address or satisfy in one single legislative act the concerns of everyone involved with reclamation farming. However, it is the opinion of the

Board of Directors of the Quincy District that the thoughts and comments expressed herein reflect the views of the vast majority of the District's landowners with respect to the major provisions of S.1867.

The position of the Quincy District as to those major provisions of S.1867 is as follows:

(1) Proposed Ownership Increase

The District Directors believe that an increase of the acreage limitation from the present 160 acres to 960 acres would be most acceptable. While a compromise figure of 1,280 acres would not be opposed, it is believed that ownership over and above 1,280 acres would not be in keeping with the historic family farm concept of reclamation law.

(2) Payment of "full cost" of water over and above 960 or 1,280 acres

The concept of payment of "full cost" of water appears to be novel to reclamation law. However, as to reclamation projects within the State of Washington, it is believed that the imposition of the full cost of water concept will operate as an effective constraint on unlimited large-scale leasing operations and therefore the concept can be and is supported. Obviously, the per acre charge for full cost of water depends upon the interest rate utilized in the full cost determination. An interest rate generally reflecting the current cost to the Federal government would appear to be in order and could be supported.

(3) Title I/Title II Approach

The Quincy District Directors support a single self-enacting expanded ownership to 960 acres, or such expanded ownership as may be determined by Congress, with full cost of water for lands leased above the expanded ownership limitation. The "two track" approach appears to create more problems than are addressed and therefore a single, self-enacting approach is considered more desirable than the suggested two-track concept. Most certainly, if the two-track approach is adopted, the election therein provided should be the option of an entire irrigation district and landowners within the District should not be individually permitted to opt for the expanded ownership and full cost of water approach. This would result in enormous administrative costs to irrigation districts and therefore such a concept cannot be supported.

(4) Equivalency

In the event the ownership limitation is increased to a minimum of 960 acres, it is the position of the Board of Directors that equivalency is not necessary. The application of equivalency to any district so requesting would create complicated administrative costs for the Bureau of Reclamation, which costs would very likely be passed on to the irrigation districts.

However, the application of Class 1 equivalency to areas with short growing seasons is supported.

(5) Elimination of ownership limitations upon pay-out of a district's construction cost obligation

There is concern that accelerated payment of a district's construction cost obligation would not be in the best interests of those districts concerned with maintaining the family farm concept. However, on the basis that a family farm pattern would probably be developed at the end of the scheduled pay-out period, the Quincy District would not oppose a legislative provision terminating ownership limitations at such time as a district had fully paid its construction cost obligation under existing contractual provisions pertaining thereto. The Quincy District does, however, strongly oppose any provision which would enable an individual landowner to prepay his construction cost obligation which would thereupon relieve him from land ownership limitations. Such prepayment by individual landowners would not be in keeping with the family farm concept and would impose extremely difficult administrative problems from the standpoint of district management.

(6) Residency

Until recently, it has been the opinion of various Administrations, Secretaries of Interior, and Commissioners of Reclamation that residency has not been a part of reclamation law since 1926. In view of the pattern of land ownerships which has developed since 1926, the repeal of any residency requirement is strongly supported.

(7) Exemption of Corps of Engineers Projects

The Quincy District supports the provisions of S.1867 exempting Corps of Engineers projects from the application from the land limitations of reclamation law.

(8) Various exceptions and exemptions from acreage limitations

S.1867 proposed various concepts relating to exceptions and exemptions from acreage limitations such as: (a) charitable organizations; (b) a fiduciary for a beneficiary whose interests do not exceed the acreage limitations; (c) land using temporary water supplies; (d) lands acquired by involuntary foreclosure; (e) isolated tracts and (f) lands served with a temporary supply which may readily be withdrawn for municipal and industrial purposes. These provisions can be supported by the Quincy District.

(9) Leasing requirements

The proposed leasing requirements will undoubtedly impose additional administrative costs to irrigation districts. However, if properly handled, these additional costs should be relatively minimal and perhaps can be considered as an appropriate price to pay to receive the benefits as proposed by S.1867.

It is suggested, however, that provision should be made for existing or future leases pertaining to perennial crops for a period of longer than ten years, for example, orchards and vineyards, provided that Secretarial approval is obtained.

(10) Definition of "individual"

Section 201(a) of S.1867 defines the term "individual" as any natural person, including his or her spouse, and including other dependents thereof within the meaning of the Internal Revenue Code (26 U.S.C. 152).

Probably no other provision of the Internal Revenue Code has caused taxpayers with dependents, and the IRS, more difficulties than said Section 152. To impose upon an irrigation district, or the Bureau of Reclamation, the burden of determining whether a particular person is within the definition of a "dependent", including the determination of whether a landowner is providing more than one-half of the support of an alleged dependent for a particular taxable year, is unthinkable from an administrative standpoint.

Therefore, it is suggested that the definition of an "individual" could be as follows:

> "The term 'individual' means any natural person, including his or her spouse, and including dependent children under the age of eighteen years."

Generally speaking, the position of the Directors of the Quincy District as to provisions of S.1867 substantially parallel the comments of Secretary Watt as presented at the Senate hearing in Washington, D. C. on December 10, 1981. S.1867, as modified in accordance with the suggestions of Secretary Watt, will generally suffice to resolve the great majority of reclamation issues resulting from the outmoded 1902 Reclamation Act.

Again, the opportunity to present this testimony at this hearing is most appreciated. Your support in the enactment of reasonable legislation to modernize the 1902 Reclamation Act is most welcome.

Sincerely,

QUINCY-COLUMBIA BASIN IRRIGATION DISTRICT

By: John W. Baird
John W. Baird, Secretary-Attorney

Personal exemption provided for under 26 USCS § 151 is authorized as matter of legislative grace and courts are powerless to enlarge amount of deduction. Crowe v Commissioner (1968, CA8) 396 F2d 766.

Where taxpayer was not natural father of children of spouse, and was not stepfather during tax year, nor were children dependents of taxpayer under provisions of 26 USCS § 152(a)(9) since they were not members of taxpayer's household nor had as their principal place of abode home of petitioner for entire taxable year, taxpayer was not entitled to dependency deductions for children under provisions of 26 USCS § 151(e)(1)(A) and 26 USCS § 152(a)(1), (2) or (9). Von Tersch v Commissioner (1967) 47 T Ct 415.

2. Validity

Classification under 26 USCS § 151(e)(1)(B) permitting dependency exemption for child under 19 or full-time student without bar of maximum yearly income limitation is not unreasonable. Scarangella v Commissioner (1969, CA3) 418 F2d 228.

Equating gross rental income for dependency purposes with gross income does not arbitrarily discriminate against those with rental income while favoring those whose income is from manufacturing and if person for whom dependency exemption is sought has gross rental income in excess of $750, exemption cannot be claimed. Hays v Commissioner (1973) 32 TCM 195.

3. Spouse as dependent

Taxpayer was not entitled to exemption for wife where record showed that taxpayer and wife had not lived together for last three months of taxable year, and that taxpayer had no knowledge as to whether his wife was working or had received earned or other income, this section allows exemption when a separate return is filed by the taxpayer only if the spouse has no gross income. Ireland v United States (1963, CA5 Miss) 323 F2d 492.

Taxpayer, filing a seperate return, may not claim a $600 personal exemption for his wife if she had any gross income in the year, even though he may have supported her. A wife is not included in the definition of a dependent. Jameson v Commissioner (1965, CA7) 353 F2d 1.

Taxpayer cannot claim two exemptions for wife one under subsec. (b) of this section and the other under subsec. (e) of this section. Term "dependent" does not include spouse. Dewsbury v United States (1956) 137 Ct Cl 1, 146 F Supp 467.

Where spouse has gross income of her own, petitioner was not entitled to personal exemption deduction for her during tax year under 26 USCS § 151(a) and (b). Von Tersch v Commissioner (1967) 47 T Ct 415.

4. Blindness

Taxpayer was entitled to exemptions for blindness under 26 USCS § 151(d)(1) where qualified opthalmologist testified that taxpayer's eye condition met requirements of statute, and record showed that if taxpayer's vision could be corrected beyond minimum statutory requirements it could only be by special type of contact lenses which would cause severe pain and could only be worn for brief period, producing infection and ulcers; term "correcting lenses" refers to lenses that may be ordinarily and normally worn, and not to lenses of character involved in case. Hollman v Commissioner (1962) 38 T Ct 251(A & NA).

§ 152. Dependent defined.

(a) General definition. For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer):

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,

(9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, or

(10) An individual who—

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

(b) Rules relating to general definition. For purposes of this section—

(1) The terms "brother" and "sister" include a brother or sister by the halfblood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child satisfies the requirements of subsection (a)(9) with respect to such individual), shall be treated as a child of such individual by blood.

(3) The term "dependent" does not include any individual who is not a citizen or national of the United States unless such individual is a resident of the United States, of a country contiguous to the United States, of the Canal Zone, or of the Republic of Panama. The preceding sentence shall not exclude from the definition of "dependent" and child of the taxpayer—

(A) born to him, or legally adopted by him, in the Philippine Islands before January 1, 1956, if the child is a resident of the Republic of the Philippines, and if the taxpayer was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him, or

(B) legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen or national of the United States

(4) A payment to a wife which is includible in the gross income of the wife under section 71 or 682 shall not be treated as a payment by her husband for the support of any dependent.

(5) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

(c) Multiple support agreements. For purposes of subsection (a), over half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

(1) no one person contributed over half of such support;

(2) over half of such support was received from persons each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;

(3) the taxpayer contributed over 10 percent of such support; and

(4) each person described in paragraph (2) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary or his delegate may by regulations prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(d) Special support test in case of students. For purposes of subsection (a), in the case of any individual who is—

(1) a son, stepson, daughter, or stepdaughter of the taxpayer (within the meaning of this section), and

(2) a student (within the meaning of section 151(a)(4)),

amounts received as scholarships for study at an educational institution (as defined in section 151(e)(4)) shall not be taken into account in determining whether such individual received more than half of his support from the taxpayer.

(e) Support test in case of child of divorced parents, etc.

(1) General Rule. If—

(A) a child (as defined in section 151(e)(3)) receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, and

(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year unless he is treated, under the provisions of paragraph (2), as having received over half of his support for such year from the other parent (referred to in this subsection as the parent not having custody).

(2) Special rule. The child of parents described in paragraph (1) shall be treated as having received over half of his support during the calendar year from the parent not having custody if—

(A)(i) the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year beginning in such calendar year, provides that the parent not having custody shall be entitled to any deduction allowable under section 151 for such child, and

(ii) such parent not having custody provides at least $600 for the support of such child during the calendar year, or

(B)(i) the parent not having custody provides $1,200 or more for the support of such child (or if there is more than one such child, $1,200 or more for all of such children) for the calendar year, and

(ii) the parent having custody of such child does not clearly establish that he provided more for the support of such child during the calendar year than the parent not having custody.

For the purposes of this paragraph, amounts expended for the support of a child or children shall be treated as received from the parent not having custody to the extent that such parent provided amounts for such support.

(3) Itemized statement required. If a taxpayer claims that paragraph (2)(B) applies with respect to a child for a calendar year and the other parent claims that paragraph (2)(B)(i) is not satisfied or claims to have provided more for the support of such child during such calendar year than the taxpayer, each parent shall be entitled to receive, under regulations to be prescribed by the Secretary or his delegate, an itemized statement of the expenditures upon which the other parent's claim of support is based.

(4) Exception for multiple-support agreement. The provisions of this subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(5) Regulations. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purpose of this subsection.

(Aug. 16, 1954, c. 736, 68A Stat. 43; Aug. 9, 1955, c. 693, § 2, 69 Stat. 626; Sept. 2, 1958, P. L. 85-866, Title I, § 4(a)–(c), 72 Stat. 1607; Sept. 23, 1959, P. L. 86-376, § 1(a), 73 Stat. 699; Aug. 31, 1967, P. L. 90-78, § 1, 81 Stat. 191; Dec. 30, 1969, P. L. 91-172, Title IX, § 912(a), 83 Stat. 722; Oct. 27, 1972, P. L. 92-580, § 1(a), 86 Stat. 1276.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law:

IRC 1939, § 25(b)(3).

In '72, P. L. 92-580, Sec. 1(a), substituted "citizen or national of the United States" for "citizen of the United States" each place it appeared in subsec. (b)(3), effective for tax. yrs. begin. after 12/31/71.

The **Chairman**. Thank you very much. I appreciate your testimony, and the constructive suggestions and criticisms you have made. We will consider those very carefully as we go through the legislation.

Mr. **Baird**. Thank you.

The **Chairman**. Thank you very much.

Mr. Don Thibault of Jerome must also be in the same car.

Mr. Warren Shillington, C.S.C. Farms, Twin Falls.

[No response.]

The **Chairman**. Mr. Sherl Chapman, Idaho Water Users Association.

Mr. **Chapman**. I am beginning to be very glad that I am not driving from Twin Falls today.

The **Chairman**. Apparently.

STATEMENT OF SHERL L. CHAPMAN, EXECUTIVE DIRECTOR, IDAHO WATER USERS ASSOCIATION, BOISE, IDAHO

Mr. **Chapman**. Mr. Chairman, again I want to thank you for giving me the opportunity to discuss the revisions of the 1902 Reclamation Act before you.

The testimony you have before you today is essentially the same that I presented December 10 before your committee in Washington, D.C.

What I would like is to ask the indulgence of the committee to allow me to just touch on a few of the subjects, and then submit supplemental testimony within your 2-week period.

The **Chairman**. That will be fine. That would be made a part of the record when received.

Mr. **Chapman**. Mr. Chairman, I would first like to touch on the concept of residency. The present revisions suggested of legislation would repeal the residency requirement. I would agree with Mr. Jones and others that have testified before your committee that I am very concerned that residency is not a part of the Reclamation Act.

I think that in our opinion the elimination of the terminology relating to residency in the 1926 Omnibus Act essentially did away with the residency concept. And the residency that is discussed in the regulations are merely the positions of Solicitors within Interior under Secretary Andrus.

Although we do think that there needs to be a very clear elimination of residency in the new law just simply to eliminate the changes and legal opinions that we seem to have with changing Secretaries of Interior.

Again, with regard to amendments of contracts, my statements I made in Washington, D.C., with regard to trying to get some administrative provision to get from title I to title II still hold.

I realize your legal concerns with the amendment of a contract, and I hope that Mr. Jones and Mr. Baird will be able to come up with constitutionally appropriate language to allow us to administratively get to the actions rather than having to go through the formal amendment of contracts, because I think that will create a great problem in Idaho.

In section 2(b), we discussed the operation language. The Governor's testimony related a little bit to the redefinition of that particular phrase, and we would concur that the term "operation" may be a bit broad. And if there was some means by which they could be redefined to make sure that some future Interior Secretary does not interpret that to mean groundwater and wastewater, and water that might be made available just through flood-flow control, for example, and other areas, we want to eliminate that possibility.

After our series of misinterpretations in 1977 under the former Secretary, we want to eliminate as many of those things as we can.

With regard to section 107, we would also concur that if contracts are required for water to be released for water quality irrigation, municipal or other things, that some terminology be inserted to make sure that that is in compliance with State law. The Bureau will have a water right that specifies those uses for that water right, and we would be reluctant to have the Bureau releasing water or making contracts for uses outside that water right. You have always been a champion of State law, and we appreciate that.

In section 110(c), you have incurred some criticism for perpetuating the ability of the State to own farmland. I think that criticism has been because of the ignorance of those criticizing the language that do not understand the need for State universities, for example, and other State entities to own farms to conduct agricultural research. We need that research very badly. And you cannot eliminate the ability of the State, especially the universities, to be able to own those farms and to operate them.

With regard to the acreage limitation, I think it's important that we realize both in Congress and we as members of the public that whatever law is passed, whatever acreage limitation is established, is just not for California, or it is just not for the class 1 lands in southwestern Idaho.

It applies to the lands that are 4,000 feet in elevation in eastern Idaho. It applies to northern Idaho lands with a short growing season. It applies to Montana and Wyoming.

And to limit us to an unreasonable acreage limitation, such as the 160 acres is now, is unfair and it squelches initiative, and it does not allow the farm community to grow. It puts us back where we were years ago, and it keeps us there.

We will not be able to continue to grow and continue to feed the world unless we do have some room to grow, and that the farmer is not bumping his head against some limit every time he turns around. We need to provide that flexibility.

Additionally, I have heard criticism of an increased acreage limitation, because people seem to think that you get bigger acreage, then you buy more equipment. And that you can buy cheap equipment to allow you to farm smaller acreages. That is just not true in today's economy.

It costs you $40,000 or $50,000 or $60,000 to buy a combine whether you are combining 40 acres of grain or whether you are combining 1,000. And the farmer that has to go out and buy that combine to cultivate or to harvest small acreages is put at a disadvantage. He then has to either find someplace else to use that combine, or he has to have somebody come in and custom farm. Custom farming is very inefficient, and it is not cost effective in many areas.

So with that, Senator, I would close, and I just thank you again for holding the field hearing out here so that you can get more grassroots input on your bill, and I will be providing you with written supplemental testimony.

[The prepared statement of Mr. Chapman follows:]

Representing Over 2,500,000 Acres of Irrigated Land

Idaho Water Users Association, Inc.

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Declo - District 4
TED QUIGLEY
Buhl - District 5
BOB BURKS
Wendell - District 6
DERRELL SAVAGE
Hagerman - District 7
DON REX
Georgetown - District 8
BERT HARTWELL
Monteview - District 9
LEON GRIEVE
Shoshone - District 10
CHARLES YOST
Wilder - District 11
FRED HOUSTON
Caldwell - District 12
WILBUR ANDREW
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CECIL SHURTLEFF
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[illegible]

TESTIMONY OF SHERL L. CHAPMAN, EXECUTIVE DIRECTOR

IDAHO WATER USERS ASSOCIATION

ON MODIFICATION OF THE 1902 RECLAMATION ACT

BEFORE THE

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

SENATOR JAMES MCCLURE, CHAIRMAN

January 11, 1982

Mr. Chairman:

My name is Sherl Chapman and I am the Executive Director of the Idaho Water Users Association. Our Association is comprised of water users in Idaho owning or operating approximately 2.75 million acres of irrigated land. Approximately 1,500,000 of these acres receive water under contract with the United States Bureau of Reclamation.

The 1902 Reclamation Act has long been of concern to our members in Idaho. The problems of acreage limitation, residency, comingled water and equivalency have haunted our farmers for years. Now it appears we are very close to resolution of these problems through introduction of your legislation. We commend you and your co-sponsors on introduction of this legislation and would offer our comments on some specific areas of concern.

1. Residency. The Idaho Water Users Association commends the sponsor for the language in S-1867 concerning residency. In our state, we feel that our problems encompassing surviving spouses and others are dealt with and solved by this approach.

2. Equivalency. We support your concept and technique of establishing equivalency. It will be helpful in the equalization of crop land potential in Idaho. It is my understanding that even though a request must be made to the Secretary of Interior, equivalency will be allowed for qualifying projects upon development of the appropriate data for an equivalency determination.

3. Validation. Because many of us are here today to correct what the courts and others have done to existing contracts between the United States and contracting entities, we would request a clear, positive and affirmative validation of all existing commitments previously made by the government in contract or otherwise. This must include recognition of prepayment provisions when they are included in existing contracts and written representations of the Federal Government.

4. Corps of Engineers Projects. In most cases in Idaho where a Corps of Engineers reservoir is involved, specific contracts have been entered for the distribution of the irrigation water by the U. S. Bureau of Reclamation. In those cases where space has been purchased, the contracts clearly set out the relationship between the United States and the contracting entities. There are no hardship cases insofar as Corps reservoirs are concerned in Idaho for that reason. However, as a conceptual matter, it appears only fair that those who were pumping from a river and a Corps of Engineers

project was thereafter superimposed on them, should not be caught up in the application of the acreage restriction. We think the law would refer to such persons as "incidental beneficiaries" in spite of conjecture that the courts would hold otherwise.

5. Public Corporations. We feel that ownership of project land by public corporations should be significantly restricted. S-1867 accomplishes this goal in Section 201(b) and has our concurrence and support.

6. Consent to Sue. The United States should be a party to confirmation or validation actions concerning water contracts in State Court proceedings so that the contracts are mutually binding.

7. Comingling. The application of the land limitation on those who use a diminutive amount of water from a Federal project appears harsh. In cases where 75% is other than water from a Federal reservoir, the project should be exempt. While validation of existing contracts may cure this problem to some extent, it may be that a separate exemption deserves consideration so that comingling is dealt with in the basic law. S-1867 does not seem to broach this subject. It is recommended that specific language be included on this subject to eliminate ambiguous interpretation of the law as it relates to comingling at a later date.

8. Pay Out. Section 106 relates to repayment of the construction costs of project facilities and the elimination of the limitations and restrictions imposed after such pay out is completed. The concept of removing the "Federal shadow" from a district once pay out is completed is excellent. However, there are many irrigation districts in Idaho that probably will not take advantage of pay out for one reason or

another. Within these districts, however, there may be individuals who would like to repay their obligation to the Federal Government on an accelerated or lump sum basis. Under the provisions of S-1867 there does not appear to be a mechanism that would allow individual pay out. It is our recommendation that language be included in the Act that would provide that an individual be allowed to prepay ahead of an established contract and relieve his lands of the acreage limitation.

9. Optional Expanded Ownership. Title II of S-1867 provides that any contract existing between the Secretary and any party pursuant to Federal reclamation laws may be amended to conform with the provisions of this Title and allow for expansion of ownership to 1,600 acres and an additional lease holding for a total amount of 3,200 acres of Class I lands or their equivalent. It further provides that irrigation water may be delivered to lands in excess of the 3,200 acres if the full cost of water is paid for such water assignable to lands leased in excess of 1,600 acres. This optional ownership is in lieu of Title I which provides that an individual may own 160 acres of land and obtain unlimited leasing. Our Association has some concern with this approach. Under Title I, an individual owning 400 acres would be forced to sell a portion of his land and lease it back in order to comply with the provisions of Title I. This seems to put the land owner in a very tenuous position and may create some hardship on farmstead owners. If the individual elects to use Title II of the Act, he must then go to the district and request that they amend the Federal contract. This procedure has several drawbacks. Most districts are required to hold a district wide election if their financial obligation of the

district is increased. Since amending a Federal contract will require a great deal of expense and time, it is entirely probable that a district wide election would have to be held before the district could even attempt to amend a contract. Once the contract language has been reached, an additional election would have to be held in order to ratify the contract in behalf of the district. Additionally, many districts are in the position where only a few land holders are in excess at the present time. It is entirely unlikely that the district would want to incur the expense and bother of attempting to amend the contract for only a few land holders. If this were the case, then modifying the reclamation law would not assist the land owners but merely pit land owner against district.

Our Association would recommend that rather than requiring a district to amend its contract in order to qualify for Title II, that language be included within the bill that would allow the land owner to select option A or option B in substitute for Title I or Title II. By providing this as an administrative option, paper work is minimized, the administrative morass is sidestepped, and a district would not be pushed into a complex expensive effort to amend a contract for only a portion of its land holders. It would seem that such language could be developed and would provide for simplification of the ownership-lease holding problem. By selection of option A or option B, the land owner is then committed to a particular course of action and the other provisions of either section would apply.

10. Acreage Limitation. We congratulate the Senator and his co-sponsors of this legislation for expanding the acreage limit under S-1867. For many years the philosophy has been within reclamation

projects that a farmer should be restricted to just barely enough acreage to make a living. No effort has been mounted to recognize initiative, efficiency, and foresight. The farmer in reclamation projects has been forced to teeter on the brink of disaster or to seek means by which the intent of reclamation law could be circumvented. By expanding the acreage limitation, you have removed this impediment to efficiency and initiative and have recognized that the farmer is an individualist who is committed to the free enterprise system. Unless we allow the farmer to progress and continue to produce food as he does so efficiently, our nation will soon suffer from a decline in productivity and apathy will develop among our farm public. Without their continued dedication, the support of Congress, and the administration, each one of us in every walk of life will be effected.

I thank you for the opportunity to testify here today and urge you to move as rapidly as possible in the passage of legislation to modify the 1902 Reclamation Act.

The CHAIRMAN. Thank you very much. As I indicated, we will receive that and make it a part of the record.

I do have a couple of questions: You have suggested in the language in your statement that I have before me that the prepayment privilege should be extended to individuals, and not just to districts.

Mr. CHAPMAN. Yes.

The CHAIRMAN. It has been suggested by others that that would impose an extreme burden upon the irrigation district if that were done. What would be your comments to that question?

Mr. CHAPMAN. In our association, we have received input on both sides of the question. Some of the districts feel that it would create some undue hardship, because of the bookkeeping required.

However, most of our members have indicated that it would not create an undue hardship. And that it might be reasonable to allow that, because as was mentioned earlier, the district is not going to go out and borrow money to pay off low-interest or a no-interest loan. However, there are some landowners that would like to do that, and have the ability to do it. And for this reason, it was our position that we should allow the individual prepayment.

The CHAIRMAN. You don't think that the districts would find that as an undue burden?

Mr. CHAPMAN. Most of the districts have indicated that it would not be.

The CHAIRMAN. Is it the same answer after the vote of the choice by individual landowner as to whether it would go under title I or title II?

Mr. CHAPMAN. The input we have got to this point, Senator, is that it would not create a problem with title I and title II.

The CHAIRMAN. The districts could from an administrative standpoint handle the individual landowner choice.

Mr. CHAPMAN. Most of the districts seem to be able to do that now. Over the past few years, in fact, over the past 2 or 3 years, many of our districts have shifted to computer technology to handle their bookkeeping, and this has eased the problem tremendously as far as bookkeeping procedures.

The CHAIRMAN. What would be your position with respect to an individual changing the election of option? Are they going to, from your standpoint, be permitted to make one choice, and that's it? Or could they change it on a year-to-year basis if they desired?

Mr. CHAPMAN. Mr. Chairman, I think changing it on a year-to-year basis would create some real problems, although we have not addressed the thought or the concept of changing back and forth.

The CHAIRMAN. I appreciate the comment, because I think if it is done by the district as a whole, you are not faced with the likelihood of very often making changes if you extend that option to individual landowners, and then I would think that the option would be exercised much more often.

Mr. CHAPMAN. It probably would, yes.

The CHAIRMAN. Thank you very much. I appreciate your statement.

I might just parenthetically note to your comment with respect to State exemptions for State owned land: One of the reasons that it is there is in addition to the research activities of State universities, the State of Washington, as an example, has a great deal of land that was granted to the State for school purposes as does the State of Idaho. Much of that in the State of Washington, however, is an irrigated farmland. They irrigate and produce crops from that, and use that income for the support of the general schools in the State of Washington.

The provision is here to allow the State to continue to exercise that option if indeed they wish to do so rather than sell the land.

So there are, again, multiple reasons for this provision, and also an attempt made to meet the requests of both Democratic and Republican administrations in the State of Washington over a number of years.

Mr. CHAPMAN. Senator, I think that is an excellent example where implementation of the Reclamation Act and the delivery of the irrigation water benefits not only the farmer, but all of the people in the State through, in this case, reduced property taxes for the schools.

Mr. CHAIRMAN. Thank you very much.

Mr. T. H. Barnes of Jerome?

[No response.]

The CHAIRMAN. Mr. Tom Prescott, also?

[No response.]

The CHAIRMAN. Mr. Doran Butler of Bliss?

STATEMENT OF DORAN BUTLER, SPRING COVE RANCH, INC., BLISS, IDAHO

Mr. BUTLER. Senator McClure, I am Doran Butler from Bliss, Idaho. I am president and manager of Spring Cove Ranch, Inc., a small family ranch corporation, commonly referred to as a subchapter S corporation.

It has been referred to before today, in fact, by one of my neighbors, Mr. Schroeder, LaVerne Schroeder lives only 2 miles from me.

We have 5 family members in 3 generations as stockholders, and own 448 shares of water in North Side Canal Co., or water for 448 acres.

According to the present reclamation law, we are in excess, even though we have less than 100 shares, or acres per person.

Since a corporation does not have a wife, we are limited by law to 160 acres or 32 acres per person in our situation, which is rather ridiculous.

Our operation is quite typical in our community where most of the land is farmed by family corporations.

I like your proposed bill with maybe one exception, which may or may not be covered in this form of the bill. I think that in small corporations where the majority of the stockholders are actual farmers, the limitations should apply to the individuals and not to the corporation. I would like to see the limitations spelled out as regards to subchapter S corporations.

I wish you success with this bill. Thank you for the opportunity to testify.

[The prepared statement of Mr. Butler follows:]

Spring Cove Ranch, Inc.
Star Route
Bliss, Idaho 83314
208-352-4202
"Pioneer Herd of the West"

BREED IMPROVEMENT
Angus Herd Improvement Records
BUILDS BETTER BEEF

January 8, 1982

Senator James McClure, Chairman
Committee on Energy and Natural REsources
Washington, D. C. 205010

Dear Senator McClure:

I am Doran Butler from Bliss, Idaho, president and manager of Spring Cove Ranch Inc.., a small family ranch corporation, commonly referred to as a subchapter S corporation. We have five family members in three generations as stockholders and own 448 shares of water in Northside Canal Co, or water for 448 acres. According to the present reclamation law we are in excess even though we have less that 100 shares, or acres per person.. Since a corporation does not have a wife we are limited by law to 160 acres or 32 acres per person in our situation, which is rather ridiculous.. Our operation is quite typical in our community where most of the land is farmed by family corporations..

I like your proposed bill with maybe one exception which may or may not be covered in this form of the bill. I think that in small corporations where the majority of the stockholders are actual farmers the limitations should apply to the individuals and not to the corporation.. I would like to see the limitations spelled out as regards to Subchapter S corporations.

I wish you success with this bill. Thank you for the opportunity to testify.

Sincerely,

Doran Butler

The **Chairman**. Thank you very much, and I appreciate your testimony.

Would the term qualified recipient as it is defined in section 201(b) be of assistance where it says "Any legal entity established under State or Federal law, which benefits 25 such individuals," would be a qualified recipient as an individual?

Mr. **Butler**. That probably would take care of it.

The **Chairman**. Thank you very much. I appreciate your testimony.

I think C. J. Marshall has the indication that he would not be here today, but will submit written testimony, which will be received and made a part of the record.

Mr. Jim Shawver of Eden.

Mr. **Shawver**. Mr. Chairman, with your permission, I have testimony written by Don McFarland. He was called earlier, but could I submit that for him, please.

The **Chairman**. Yes. It will be placed in the record in full.

Mr. **Shawver**. Thank you.

The **Chairman**. Do I understand then that he will not be here?

Mr. **Shawver**. That's right, Mr. Chairman.

STATEMENT OF JAMES C. SHAWVER, EDEN, IDAHO

Mr. **Shawver**. Mr. Chairman, Mr. Brown, members of the committee, I want to thank you for being able to make my remarks here today.

I am James Shawver. I live at Route 1, Eden, Idaho.

I am married and have three boys and one girl. I am currently engaged in farming a family farm at Eden, Idaho. I am the third generation on this farm.

I am also a member of the board of directors of the North Side Canal Co. and vice-chairman of the Idaho Water Resource Board.

Today I am appearing as an individual farmer. The farm that I run is approximately 900 acres, and it is all watered by a reclamation project. My family and I, with one full-time employee, farm this ground. Our desire is to operate as a family corporation, because of the ease of financing, ownership, and taxes.

The cloud that has been over us because of not having the reclamation law amended, has prevented us from doing things that would help us survive during these tough economic times.

I urge you to do what is in your power to get Senate bill 1867 passed into law. Thank you.

The **Chairman**. Thank you very much.

The 900 acres is owned by the family corporation?

Mr. **Shawver**. Part individual and part by the corporation, Mr. Chairman.

The **Chairman**. Would the provisions of S. 1867 take care of your personal situation?

Mr. **Shawver**. It certainly would, yes.

The **Chairman**. Thank you very much. I appreciate your testimony.

Mr. **Shawver**. Thank you.

The **Chairman**. Mr. Phillip Uhlig of Hansen.

Mr. UHLIG. Senator, in addition to my own statement, I have the statements of my father, Mr. Ed Uhlig, and the statement of Mr. George Coiner, neither one could be here today, and with your permission, I would like to submit them for the record.

The CHAIRMAN. Those statements will appear in full in the record.

STATEMENT OF PHILLIP C. UHLIG, HANSEN, IDAHO

Mr. UHLIG. My name is Phillip Uhlig. I am an irrigation farmer from Hansen, Idaho, and that's in Twin Falls County. I am here today to voice my concern with the proposed reform measures to deal with the Reclamation Act of 1902.

As I understand the purpose of the Reclamation Act of 1902, it was to protect and assist family farmers, people like myself.

However, I find that a law supposedly enacted to protect and assist me might be used, instead, to confiscate all but 160 acres of my land. Such an action would leave me and individuals like myself with farms of noncompetitive size, preventing us from making a sufficient living for ourselves.

In addition, the confiscation of my land would destroy the individual drive and initiative which is so necessary in farming.

I would like to commend you and your cosponsors for the introduction of Senate bill 1867. And I invite your attention to my comments on that bill, which I support, as the most realistic approach being considered to reform the 1902 Act.

Concerning acreage limitation, the proposal of 1,600 acres owned as the maximum in Senate bill 1867 is a rational increase in premissible ownership; however, I honestly do not see the need for any limitation on the amount of land owned.

Instead, why not require, if necessary, that the full cost be paid to the Government for water on land in excess of 1,600 acres, such as you have provided for on leasing.

Concerning equivalency, I support your concept of equivalency. Such a provision is an absolute necessity in order to equalize the effect of the Reclamation Act on all farmers. However, the equivalency adjustments should be applied on a nationwide basis to assure equal treatment.

Concerning residency, Senate bill 1867's removal of the residency provision correctly deals with the problems of modern day farming. With modern day transportation and communication, a residency requirement is not justifiable.

Concerning repayment, I support a repayment provision. This would have to include the situation where there was an alleged "commingling" of federally funded project water in a non-federally funded project in order to be consistent. Why should a farmer be restricted when he has paid back the Government's loan, or where he never received any aid from the Government in the first place?

Restrictions on leasing were not included in the 1902 Reclamation Act, and can hardly be argued to promote family ownership of farmland. If a leasing restriction is necessary, I support Senate bill 1867's restriction, providing that it be in addition to the ownership restriction, and not as limited in acreage allowing over 1,600 acres to be leased with repayment of the full cost of water above the project water.

Concerning validation, I feel that it is absolutely necessary that the Government abide by its existing commitments just as private individuals must. I recommend that your legislation provide for the automatic validation of secretarial exemption as well as all contracts with the Government.

I commend you for your efforts to reform the outdated 1902 Reclamation Act.

Thank you for the opportunity to present my views on this matter.

[The prepared statement of Mr. Uhlig follows:]

Mr. Phillip C. Uhlig
Route #1
Hansen, Idaho 83334

January 7, 1982

The Honorable James McClure, Chairman
Energy and Natural Resources Committee
United States Senate
149 Borah Station
Boise, Idaho 83702

RE: S. 14 - 160 Acre Limitation Matter - Boise, Idaho Hearing

Dear Senator McClure:

I am an Idaho irrigation farmer, and I am here today to voice my concern with the proposed reform measures to deal with the Reclamation Act of 1902. As I understand the purpose of the Reclamation Act of 1902, it was to protect and assist family farmers, people like myself. However, I find that a law supposedly enacted to protect and assist me might be used, instead, to confiscate all but 160 acres of my land. Such an action would leave me and individuals like myself with farms of non-competitive size, preventing us from making a sufficient living for ourselves. In addition, the confiscation of my land would destroy the individual drive and initiative which is so necessary in farming.

I would like to commend you and your co-sponsors for the introduction of Senate Bill 1867, and I invite your attention to my comments on that bill which I support as the most realistic approach being considered to reform the 1902 Act.

Acreage Limitation. The proposal of 1,600 acres owned as the maximum in Senate Bill 1867 is a rational increase in permissible ownership; however, I honestly do not see the need for any limitation on the amount of land owned. Instead why not require, if necessary, that the full cost be paid to the government for water on land in excess of 1,600 acres such as you have provided for on leasing.

Equivalency. I support your concept of equivalency. Such a provision is an absolute necessity in order to equalize the effect of the Reclamation Act on all farmers. The equivalency adjustments should be applied on a nationwide basis to assure equal treatment.

Residency. Senate Bill 1867's removal of the residency provision correctly deals with the problems of modern day farming. With modern day transportation and communication, a residency requirement is not justifiable.

Repayment. I support a repayment provision. This would have to include the situation where there was an alleged "commingling" of federally funded project water in a non-federally funded project in order to be consistent. Why should a farmer be restricted when he has paid back the government's loan or where he never received any aid from the government in the first place?

Leasing Restrictions. Restrictions on leasing were not included in the 1902 Reclamation Act and can hardly be argued to promote family ownership of farm land. If a leasing restriction is felt to be necessary, I support Senate Bill 1867's providing that it be in addition to the ownership restriction, as opposed to being cumulative therewith, and not as limited in acreage allowing over 1,600 acres to be leased with repayment of the project water costs.

Validation. I feel that it is absolutely necessary that the government abide by its existing commitments just as private individuals must. I recommend that your legislation provide for the automatic validation of secretarial exemption as well as all contracts with the government.

I commend you for your efforts to reform the outdated 1902 Reclamation Act. Thank you for the opportunity to present my views on this matter.

Very truly yours,

PHILLIP C. UHLIG

The CHAIRMAN. Thank you very much for your testimony. I hope you will extend my thanks to your father and Mr. Coiner for their testimony here today.

Mr. UHLIG. Thank you, sir.

The CHAIRMAN. Thank you very much.

Mr. GORDON TATE. You may proceed, please.

STATEMENT OF GORDON TATE, MASTER, IDAHO STATE GRANGE, MERIDIAN, IDAHO

Mr. TATE. Senator McClure, chairman of the Committee on Energy and Natural Resources, I am Gordon Tate, master of the Idaho State Grange.

The Grange very much appreciates your bringing this hearing to the State of Idaho. Surely no other location or State could appreciate more the value of reclamation and irrigation than we do in southern Idaho. I understand that there are 32,260 acres of land among 250 ownerships that may be affected in Idaho under the present law.

We applaud this effort to solve this most involved, perplexing and critical problem at this time. The Grange in Idaho has been involved in working on or analyzing several other bills in the last few years. This appears to be a somewhat different approach to the problem. Our policies are in agreement with many provisions of Senate bill 1867.

The Grange is a strong supporter of the family farm, which we consider the very backbone of efficient, stable agricultural production.

Generally speaking, we would consider this to be any acreage size family unit where the outside full-time hired labor is not more than that provided by family members. This is usually a very efficient and stable production unit.

I might add also that all of the Federal programs have been designed for family farm operations, such as the Carey Act, Homestead Act, and so forth.

As to the bill itself under title I provisions: With respect to the residency provision, we feel it does help to preserve the family farm concept and take better care of the land itself, as well as reducing the likelihood of nonfamily farming. But in our mobile world a figure of 150 miles would be much more realistic.

An equivalency provision which would apply between different districts as well as within each district would solve some of the controversy over size but might be difficult to work out. Equivalency must be an important part of any acreage limitation provisions.

Where excess land must be disposed of, we would like for family members or employees or neighbors to have had first purchase opportunity, section 105 on leasing sounds good.

Under title II: the 1,600 acre or 3,200 acre provisions of title II appear to us to be unnecessarily large. We would prefer an ownership of not over 960 acres per family with similar ceiling on leased land, with a realistic equivalency provision, which might considerably change that, and in effect could easily double it.

The average irrigated farm size in Idaho is 178 acres according to the 1978 census figures. On a national basis, according to the Interior Department's 1979 Land Tenure Survey, there are 126,000 individual owners of the 8,800,000 acres of reclamation land:

Of these, 91 percent own no more than 160 acres, and comply with reclamation law, and this is about 51 percent of the reclamation land;

Plus 7 percent own an average of 320 acres, or 22 percent;

Additionally, 1.7 percent or 2,142 individuals own an average of 657 acres, which 16 percent of the land;

Only three-tenths of 1 percent or 378 individuals own 2,560 acres, which is 11 percent of reclamation land.

We do not want to stifle the energetic family farmer who feels the need to increase acreage to keep up with the cost of more efficient machinery, but doubt that a total of 3,000 acres plus is needed. Many farmers who expand too rapidly find after a short time that they are only working for the machinery companies or perhaps their bank.

While title II provides for a small corporation approach to 25 persons or less, we have doubts that this would either meet the needs of a family type operation, or insure against a larger corporation using it to their advantage.

We also have reservations about a larger entity paying full cost for water supplied in excess of the regular limit. The subsidized water portion of an acreage as large as that shown would give considerable advantage to a large operator.

I did not see commingling of waters specifically addressed. We feel that the limitations should not apply where less than 25 percent of the total water in an average year comes from Federal projects.

On those points in the bill we have not discussed, we are in general agreement.

Without realistic acreage limitations and a residency requirement for reclamation projects, family farmers may be forced to compete with big oil and other multinational corporations for agricultural land, or a place in the market, or FmHA loans and disaster payments.

As to the whole question of subsidy, I cannot close without pointing out the huge value of the agricultural developments to the economy and real valuation of our counties, States, and the Federal Government. They usually provide great recreational and wildlife opportunities which in turn add all these sales to the economy.

The initial costs of these projects have often been paid back several times over by the property and income taxes paid at all levels as a result of this development.

Thank you.

[The prepared statement of Mr. Tate follows:]

STATEMENT FOR HEARING ON S.1867, a bill to modernize the 1902 RECLAMATION ACT.

January 11, 1982

-Gordon Tate, Master
Idaho State Grange
P.O. Box 367
Meridian, Idaho 83642

Senator James McClure, Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Chairman McClure and members of the committee:

I am Gordon Tate, Master of the Idaho State Grange.

The Grange very much appreciates your bringing this hearing to the state of Idaho. Surely no other location or state could appreciate more the value of reclamation and irrigation than we do in southern Idaho. I understand that there are 32,260 acres of land among 250 ownerships that may be effected in Idaho under the present law.

We applaud this effort to solve this most involved, perplexing and critical problem at this time. The Grange in Idaho has been involved in working on or analyzing several other bills in the last few years. This appears to be a somewhat different approach to the problem. Our policies are in agreement with many provisions of Senate bill 1867. The Grange is a strong supporter of the family farm, which we consider the very backbone of efficient, stable agricultural production. Generally speaking, we would consider this to be any acreage size family unit where the outside full-time hired labor is not more than that provided by family members. This is usually a very efficient and stable production unit.

Title I Provisions: With respect to the residency provision, we feel it does help to preserve the family farm concept and take better care of the land itself, as well as reducing the likelihood of corporate farming. But in our mobile world a figure of 150 miles would be more realistic.

An equivalency provision which would apply between different districts as well as within each district would solve some of the controversy over size but might be difficult to work out. Equivalency must be an important part of any acreage limitation provisions.

Where excess land must be disposed of, we would have liked for family members or employees or neighbors to have had first purchase opportunity. Section 105 on leasing sounds good.

Title II: The 1600 acre or 3200 acre provision of Title II appear to us to be unnecessarily large. We would prefer an ownership of not over 960 acres per family with similar ceiling on leased land, with realistic equivalency provisions.

The average irrigated farm size in Idaho is 178 acres according to the 1978 census figures. On a national basis, according to the Interior Department's 1979 Land Tenure Survey, there are 126,000 individual owners of the 8,800,000 acres of reclamation land:

-91% own no more than 160 acres, and comply with reclamation law.
(51% of reclamation land)

-7% own an average 320 acres (21% of reclamation land)

-1.7% or 2,142 individuals own an average 657 acres (16% of reclamation land)

-.3% or 378 individuals own 2560 acres (11% of reclamation land).

We do not want to stifle the energetic family farmer who feels the need to increase acreage to keep up with the cost of more efficient machinery but doubt that a total of 3,000 plus acres is needed. Many farmers who expand too rapidly find after a short time that they are only working for the machinery companies or perhaps their bank.

While Title II provides for a small corporation approach to 25 persons or less, we have doubts that this would either meet the needs of a family type operation or insure against a larger corporation using it to their advantage.

We also have reservations about a larger entity paying "full cost" for water supplied in excess of the regular limit. The "subsidized" water portion of an acreage as large as that shown will give considerable advantage to a large operator.

I did not see comingling of waters specifically addressed. We feel that the limitations should not apply where less than 25% of the total water in an average year comes from federal projects.

On those points in the bill we have not discussed we are in general agreement.

Without realistic acreage limitations and a residency requirement for reclamation projects, family farmers may be forced to compete with big oil and other multi-national corporations for agricultural land, a place in the market, FmHA loans and disaster payments.

As to the whole question of subsidy, I cannot close without pointing out the huge value of the agricultural developments to the economy and real valuation of our counties, states, and the Federal government. They usually provide great recreational and wildlife opportunities which in turn add all these sales to the economy.

The initial costs of these projects have often been paid back several times over by the property and income taxes paid at all levels as a result of this development.

The CHAIRMAN. Thank you very much, Mr. Tate.

I noted in your statement the desire to limit the acreage to a lower figure, as I have noted in press reports and statements issued on behalf of the Grange. At what point do oil companies and national and international corporate conglomerates become interested in the ownership of farmland?

Mr. TATE. Well——

The CHAIRMAN. That's a tough question. I ask it seriously, however, because is there evidence to indicate that they will come in at some figure of what size operation it is that they are interested in?

Mr. TATE. I can't answer that. I guess some of them did try to come in on the State of Washington.

The CHAIRMAN. But those were 50,000-acre operations, weren't they, 30,000, 40,000, 50,000?

Mr. TATE. They backed out, of course.

The CHAIRMAN. We had one, I think, Ore-Ida Farms didn't come into a reclamation project, but they did come in and put in a massive pump project which they found to be somewhat less economic than they thought it was going to be. If I recall correctly, Mr. Simplot and others put in some on the bench between Little Willow and Big Willow Creeks, and they found a similar result that it is hard to hire people to do what a farmer does for himself. When they are generally hired, they want a 40-hour week, and paid vacation, and days off, and national holiday days, and all of the rest of the limitations that are fringes that go along with normal labor contracts today. The farmer doesn't enjoy any of those benefits when he is working for himself.

I don't want the corporate farming to come in under the umbrella of the Reclamation Act either. I just wonder if there are any of them that have really expressed an interest below 5,000 acres. I haven't seen it, but I just wondered if you have or your members have?

Mr. TATE. Not at the present time. My answer, I guess, would be that we are not making any more land. We are trying to develop some additional land. Land has the most real value probably of anything in this universe.

And down the line, it is entirely possible that these corporations will pay more attention to that. And this is the type of thing that we would hope could stop before they got to thinking about it.

The CHAIRMAN. I understand that, and I am equally concerned.

I suppose as one other witness indicated today, whatever acreage limitation we apply is in effect an arbitrary subjective judgment. No definitive test can be applied to it to know what is right, and I recognize the limitations as expressed in this 1867 are arbitrary figures.

But I haven't seen any evidence either in Idaho, in my own experience, or presented to us before the committee in hearings over a number of years that indicate that the corporate conglomerates are interested in small units. They are interested in very, very large units.

The figure in here is an arbitrary figure, and may not be the right one. I believe it would be one that is sufficiently restrictive of the large oil companies and others that have been mentioned as possible competitors of the family owned farms, and simply will not come in under those conditions.

If there is evidence to the contrary, I think we will find it before it is too late.

Mr. TATE. I might add just one thing: I feel that a corporate farm of, say, 3,000 acres, or so, does have considerable advantage in competition between an individual—with an individual who is trying to get started out here in the farming situation with perhaps 300 or 400 acres. There is another point or another reason why we feel that this limitation should be lower.

The CHAIRMAN. Thank you very much, Mr. Tate. I do appreciate your testimony, and I respect the Grange, and membership of the Grange very highly. They are a valued organization, and have been for decades in Idaho.

Mr. TATE. Thank you very much.

The CHAIRMAN. Mr. Bert Moulton, representing the Potato Growers of Idaho from Blackfoot.

You may proceed, Mr. Moulton.

STATEMENT OF BERT MOULTON, POTATO GROWERS OF IDAHO, INC., BLACKFOOT, IDAHO

Mr. MOULTON. Thank you, Senator.

My name is Bert Moulton, and I am the area manager of the frozen division of the Potato Growers of Idaho.

PGI is a voluntary cooperative of Idaho potato growers organized into seven districts stretching across southern Idaho. Our membership is comprised of 1,625 potato growers, and some of them receive water under contract with the U.S. Bureau of Reclamation. Many of our members are also members of the Idaho Water User Association and the Irrigation Pumpers Association.

Because of this potato grower interest in irrigation, Potato Growers of Idaho discussed the problems of the 1902 Reclamation Act at its recent annual meeting in Pocatello last month.

The following resolution resulted from those discussions:

> Whereas, recent court decisions and proposed regulations from the U.S. Department of Interior drastically modifies past applications of the U.S. 1902 Reclamation Act as it pertains to the 160-acre limitation; and
>
> Whereas, modern technology and economies of farming, not envisioned in 1902, have made 160 acres an uneconomic farming unit in many areas and the proposed enforcement of the 160-acre limitation threatens future efficiency and productivity of Idaho agricultural land involved: Now therefore be it *Resolved,* that the Potato Growers of Idaho continue to actively work toward revision of the 1902 Reclamation Act to reflect the needs of modern farm economies and support the legislative efforts that protect Idaho interest and water. Further, that PGI works with the Idaho Water Users Association Pumpers in developing a unified position of appropriate legislation for the Idaho growers.

As per this resolution, Potato Growers of Idaho offers this testimony into the hearing record in support of the testimony of the Idaho Water Users Association given by Mr. Sherl L. Chapman, on December 10, before the Senate Energy and National Resources Committee in Washington, D.C.

We wish to express our thanks for this opportunity for testifying before you today.

[The prepared statement of Mr. Moulton follows:]

pgi
POTATO GROWERS OF IDAHO
Producers of World Famous Potatoes

TESTIMONY OF POTATO GROWERS OF IDAHO, INC.
ON
LEGISLATION TO AMEND AND/OR MODIFY
1902 RECLAMATION ACT

GIVEN BY

ALBERT MOULTON, AREA MANAGER - PGI FROZEN DIVISION

BEFORE THE

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

SENATOR JAMES MC CLURE, CHAIRMAN

JANUARY 11, 1982

Mr. Chairman:

My name is Bert Moulton and I am the Area Manager of the Frozen Division of Potato Growers of Idaho, Inc. PGI is a voluntary cooperative of Idaho potato growers organized into seven districts stretching across all of southern Idaho. Our membership is comprised of 1625 potato growers and some of them receive water under contract with the U.S. Bureau of Reclamation. Many of our members are also members of the Idaho Water Users Association and Irrigation Pumpers Association.

Because of this potato grower interest in irrigation, Potato Growers of Idaho discussed the problems of the 1902 Reclamation

STATE OFFICE — P O BOX 949 — BLACKFOOT, ID 83221 — PHONE 208 785-1110

Act at its recent Annual Meeting held last month in Pocatello. The following REsolution resulted from those discussions:

RESOLUTION

WHEREAS, recent court decisions and proposed regulations from the U.S. Department of the Interior drastically modifies past applications of the U.S. 1902 Reclamation Act as it pertains to the 160 acre limitations; and

WHEREAS, modern technology and economies of farming, not envisioned in 1902, have made 160 acres an uneconomic farming unit in many areas and the proposed enforcement of the 160 acre limitation threatens future efficiency and productivity of Idaho agricultural land involved.

NOW THEREFORE BE IT RESOLVED, that the Potato Growers of Idaho continue to actively work toward revision of the 1902 Reclamation Act to reflect the needs of modern farm economies and support the legislative efforts that protect Idaho interest and water. Further, that PGI works with the Idaho Water Users Association and Irrigation Pumpers in developing a unified position on appropriate legislation for the Idaho growers.

As per this resolution, Potato Growers of Idaho offers this testimony into the hearing record in support of the testimony of the Idaho Water Users Association given by Mr. Sherl L. Chapman, Executive Director, on December 10, 1981, before the Senate Energy and National Resources Committee in Washington, D.C.

We express our appreciation for this opportunity to present testimony on this important matter in the local field hearing.

The CHAIRMAN. Thank you very much, Mr. Moulton. I appreciate your testimony here today, and the trouble you took to get here.

I have always felt it is important for those of us who have the responsibility to pass laws in the Nation's capital, to also give the opportunity to people who are affected to testify before our hearings, and that is not always possible in Washington, D.C. It is a long ways from Idaho to the District of Columbia. I think it is important to give people here the chance to testify.

Mr. MOULTON. Thank you.

The CHAIRMAN. Yes, sir. Thank you.

Mr. Cecil Hill, representing the Noble Ditch Co. of New Plymouth.

You can't pass yourself off as Cecil.

Mr. HENGGELER. Senator, he fell ill this morning. Could I just present his testimony to you?

The CHAIRMAN. You can present it or just give it for the record.

Mr. HENGGELER. I will just give it for the record.

The CHAIRMAN. All right. You are next on the list anyhow. Mr. Bob Henggeler of Fruitland, Idaho.

STATEMENT OF ROBERT HENGGELER, FRUITLAND, IDAHO

Mr. HENGGELER. Senator McClure, my name is Robert Henggeler. I am a third generation Idaho farmer in the fruit producing business.

At the present time, I am a member of two water boards delivering water to some 60,000 acres in the Payette River drainage. We do use natural stream flow water, private storage water, and Bureau contracted storage water.

I do agree and support the testimony of the Idaho Water Users Association presented by Sherl Chapman on December 10.

I would like to caution the Idaho congressional people on the commingling paragraph. Specific language needs to be included on this subject. In cases where 75 percent of the water used is other than water from a Federal reservoir, the project, in my opinion, should be exempt.

I would like to thank Senator McClure for this opportunity to testify.

[The prepared statement of Mr. Henggeler follows:]

Henggeler Packing Co., Inc.

Phone 452-1212
P.O. Box 313 Fruitland, Idaho 83619

January 11, 1982

Re: Bill, S. 1867, Testimony on the 1902 Reclamation Act.

Mr. Chairman:

My name is Robert Henggeler. I am a third generation Idaho farmer in the fruit producing business. At the present time, I am a member of two water boards delivering water to some sixty thousand acres in the Payette River Drainage. We do use natural stream-flow water, private storage water and Bureau contracted storage water,

I do agree with the testimony of the Idaho Water Users Association. I would like to caution our Idaho congressional people on the Comingling paragraph. Specific language needs to be included on this subject. In cases where 75% of the water used is other than water from a federal reservoir, the project should be exempt.

I would like to thank Senator McClure for this opportunity to testify.

Robert Henggeler
Rt. #1
Fruitland, Idaho 83619

The **CHAIRMAN**. Thank you very much, Bob. I appreciate your focusing on the question of commingled water. It is an important question that we have to address in one way or the other.

We did attempt to in the one paragraph I referred to earlier, and it certainly needs clarification either by way of change or by way of legislative history. Certainly, it is not something that we can ignore.

I do appreciate your testimony. Thank you very much.

Mr. **HENGGELER**. Thank you.

The **CHAIRMAN**. I hope Mr. Hill recovers. I hope it is not serious.

Mr. Max Schlottman of Caldwell, Idaho.

It is nice to have you before the committee again.

STATEMENT OF MAX SCHLOTTMAN, CALDWELL, IDAHO

Mr. **SCHLOTTMAN**. Senator McClure, other members, ladies, and gentlemen:

My name is Max Schlottman, and at the present time I reside in Caldwell, Idaho.

I am a long-time farmer and have owned and operated several farms in the Wilder area, some 25 miles west of Caldwell.

Today I am representing myself as a farmer and a concerned individual regarding proposed modifications to the 1902 Reclamation Act, specifically S. 1867.

I would like to commend you and your cosponsors on introducing this legislation in an effort to remove many of the long existing inequities and roadblocks to initiative.

Significant testimony has been offered on many of the facets of your bill. I would like to limit my comments to an area I feel has not received enough attention in testimony. The concept of residency being a part of reclamation law was brought forth most recently by Cecil Andrus in 1977.

Even though the residency language in the original act had been eliminated in 1926, Secretary Andrus maintained that an individual must live on a farm in order for that farm to receive reclamation water. I not only feel that his interpretation of the law is incorrect, but that the concept of residency is totally impractical and works against the very reason for reclamation law, that of food production.

It is my position that many individuals receiving water within the reclamation projects are bona fide farmers even though they may or not live on the land. Owners of farms take part in management decisions, oversee a good portion of the farm operation, and are involved in most of the decisions affecting that farm's productivity.

Without such involvement, it is highly unlikely that it would receive any income from the farm which is contrary to their goals.

I, myself, have farmed in the Wilder area for 35 years. Recently I wished to retire from the day to day operation of the farm and lease my property to others. However, in no way do I wish to dispose of my land since I, like many other farmers, have developed my farm operation as a hedge against inflation, and as a source of retirement income.

At the present time, I reside approximately 25 miles from my farmstead. And perhaps because of ill health, or other reasons, in the future, I may wish to move to Boise or to some other area. I think it is totally unfair and disregards the entire concept of initiative and aggressiveness if some law or regulation forces me to dispose of my only source of retirement income just because I do not wish to live in a specific area.

I have invested years of hard work and thousands of dollars in the development of that farmstead and I should be accorded the right to receive the benefits of that work and investment.

Another example in my area in southwestern Idaho is that of many people of the Friends religion who live in the Greenleaf area. These people are hard working and industrious, and have developed excellent farmsteads within the bounds of reclamation projects.

Many of these people, however, wish to retire at the end of their working life to the Friend's Retirement Village near Newberg, Oreg., which is some 500 miles from here. And unless the concept of residency under reclamation law is repealed, these people will be forced to sell their property in order to retire to this area. Again, this is unfair and improper.

A third area of concern is that of surviving spouses and heirs. While the concept of surviving spouses is treated under proposed regulation, the area concerning heirs to property is not clearly dealt with.

In most cases, farmsteads developed within reclamation projects are the result of many hours of hard work by a man, wife, and his children. In many cases, because of the limit commodity prices and opportunity in farming, the children have since moved from the farm into other careers. However, they have a large stake in the farmstead, and upon the death of their father and mother, they should not be denied this part of their birthright.

I do not know of any other segments of our economy that are required to be residents of a given area in order to receive Federal benefits. Certainly, the welfare recipient may receive food stamps wherever he or she may go, and many businessmen are able to take advantage of postal service subsidies, highway subsidies, low interests Federal loans, and other significant Federal benefits to increase their busines and income, and yet are not required to live within a given area either during the business operation or upon retirement.

All we ask is to be treated equal to other segments of our economy, and that the Nation recognize the tremendous benefit to our economy and well-being that is the result of the reclamation program and the food production accomplished by the farmers.

Thank you for the opportunity to testify here today.

[The prepared statement of Mr. Schlottman follows:]

TESTIMONY OF MAX SCHLOTTMAN ON MODIFICATION OF THE 1902 RECLAMATION ACT BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SENATOR JAMES MC CLURE, CHAIRMAN
BOISE, IDAHO
January 11, 1982

Mr. Chairman:

My name is Max Schlottman and at the present time I reside in Caldwell, Idaho. I am a long time farmer and have owned and operated several farms in the Wilder area, some 25 miles west of Caldwell. Today I am representing myself as a farmer and a concerned individual regarding proposed modifications to the 1902 Reclamation Act, specifically S-1867. I would like to commend you and your co-sponsors on introducing this legislation in an effort to remove many of the long existing inequities and roadblocks to initiative.

Significant testimony has been offered on many of the facets of your bill. I would like to limit my comments to an area I feel has not received enough attention in testimony. The concept of residency being a part of reclamation law was brought forth most recently by Secretary Cecil D. Andrus in 1977. Even though the residency language in the original Act had been eliminated in 1926, Secretary Andrus maintained that an individual must live on a farm in order for that farm to receive reclamation water. I not only feel that his interpretation of the law is incorrect but that the concept of residency is totally impractical and works against the very reason for reclamation law, that of food production. It is my position that many individuals receiving water within reclamation projects are bona fide farmers even though they may or may not live on the land. Owners of farms take part in management decisions, oversee a good portion of the operation of the farm, and are involved in most of the decisions affecting that farm's productivity. Without such involvement, it is highly unlikely it would receive any income from the farm which is contrary to their goals. I, myself, farmed in the Wilder area for 35 years. Recently I wished to retire from the day to day operation of the farm and lease my property to others. However, in no way do I wish to dispose of my land since I, like many other farmers, have developed my farm operation as a hedge against inflation and as a source of retirement income. At the present time I reside approximately 25 miles from my farmstead. Perhaps because of health reasons or some other reasons in the future, I may wish to move to Boise or to some other area of the country. I think it is totally unfair and disregards the entire concept of initiative and aggressiveness if some law or regulation forces me to dispose of my only source of retirement income just because I do not wish to live in a specific area. I have invested years of hard work and thousands of dollars in the development of that farmstead and I should be accorded the right to receive the benefits of that work and investment.

Another example in southwestern Idaho is that of the many people of the Friends religion who live in the Greenleaf area. These people are hard working and industrious and have developed excellent farmsteads within the bounds of reclamation projects. Many of these people, however, wish to retire at the end of their working life to the Friend's Retirement Village near Newberg, Oregon. Unless the concept of residency under reclamation law is repealed, these people will be forced to sell their property in order to retire to this area. Again, this is unfair and improper.

A third area of concern is that of surviving spouses and heirs. While the concept of surviving spouses is treated under proposed regulation, the area concerning heirs to property is not as clearly dealt with. In most cases, farmsteads developed within reclamation projects are the result of many hours of hard work by a man and wife and his children. In many cases, because of the limited commodity prices and opportunity in farming, the children have since moved from the farm into other careers. However, they have a large stake in the farmstead and upon the death of their father and mother, they should not be denied this part of their birthright.

I do not know of other segments of our economy that are required to be residents of a given area in order to receive federal benefits. Certainly the welfare recipient may receive food stamps wherever he or she may go and many businessmen are able to take advantage of postal service subsidies, highway subsidies, low interest federal loans, and other significant federal benefits to increase their business and income and yet are not required to live within a given area either during the business operation or upon retirement. All we ask is to be treated equal to other segments of our economy and that the nation recognize the tremendous benefit to our economy and well-being that is the result of the reclamation program and the food production accomplished by the farmers.

Thank you for the opportunity to testify here today.

Max Schlottman

The CHAIRMAN. Thank you very much for your testimony.

Mr. Charles Cast of King Hill?

[No response.]

The CHAIRMAN. Bob Goodell, Caldwell? Is Mr. Goodell here?

[No response.]

The CHAIRMAN. I might announce that is will be our intention to go down the list. I think we can complete those who are here before we break for lunch. If we have not completed calling the witness list by that time, we break anyhow, returning after lunch, giving an opportunity to those who have not testified or those who are late arrivals.

Mr. Peter Link of Hansen.

[No response.]

The CHAIRMAN. Do we have a representative of the Idaho State Wheat Growers Association?

[No response.]

The CHAIRMAN. Mr. Tom Hovenden.

STATEMENT OF TOM HOVENDEN, SECRETARY MANAGER, IDAHO CATTLE FEEDERS ASSOCIATION, BOISE, IDAHO

Mr HOVENDEN. Senator McClure, the Idaho Cattle Feeders welcome the chance to be here. I think everything has been fairly well covered. I will keep my remarks rather brief.

At our board meeting on Saturday, I was asked to be here.

We agree that the residency requirement has got to be eliminated. We don't think that people that have worked in the land in their productive years should be forced to retire at some place selected by the U.S. Congress.

The equivalency provision is extremely important. It is pretty hard to compare land on just an acre-by-acre basis. You have got to consider the crops, the growing season, and so forth.

We hope that section 103 will eliminate some of the problems that come back through a variety of administrations or things that have been interpreted.

We find that much is said about the family farm today every time we go someplace. I have asked repeatedly for definitions, and no one can define it. They think maybe it is a man and wife, and a bunch of kids working real hard, but they want all the other good things that other people have. It has changed, and we have got to find something better than just family farms. No one could define it.

Corporate farms are something different. To the corporation, it is a great vehicle. Many of our corporate farms now have started perhaps what someone might have called a family farm or a small operation, but they grew into it. And they need the corporation so that they don't have to go to probate court every time they have a death in the family.

We find two varieties of family farms or corporate farms: the successes and the failures. The successes are the farms that have grown as corporate farms, and run by farmers and farmed.

We have seen some large corporate farms. You mentioned one called Skyline Farms that has been a total fiasco. No doubt that food company started to lower the price of potatoes and used it as a weapon on potato farmers.

But basically, as we have seen in our industry, the cattle feeding industry, economics will set the size. Economics has changed the size of farms and farming operations, and it has changed our business.

And there is one other ingredient of management, and we find some people that can feed 10,000 cattle, and it doesn't bother them at all. And for other people, 1,000 is more responsibility than they can handle.

So we think if you will change this thing in the areas in which you have done, maybe we could get along for another fourscore years, and let economics tell us just how we are going to operate these things.

[The prepared statement of Mr. Hovenden follows:]

IDAHO
CATTLE FEEDERS
ASSOCIATION, INC.

NATIONAL CATTLEMEN'S ASSOCIATION

2120 AIRPORT WAY
P. O. BOX 5755 — BOISE, IDAHO 83705
AREA CODE 208/343-1615

IF NOT US / WHO?
IF NOT NOW / WHEN?

PRESIDENT
ED JOHNSON
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VICE PRESIDENT
TOM OLSEN
Boise
SECTY TREAS
JOHN YORE
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DIRECTORS
DISTRICT 1
TOM NEEDHAM
Caldwell
TOM BASABE
Grand View
DISTRICT 2
JUSTIN SKAAR
[illegible]
EVAN MEYERS
Sugar City
DISTRICT 3
ROBERT SCHENK
Paul
GARY HILL
Shoshone
EX OFFICIO
GARY CHIPMAN
Weiser
AT LARGE
BILL GOTSCH
Parma
ALLIED INDUSTRIES
LOWELL HURSH
Caldwell
SECTY MANAGER
TOM HOVENDEN
Boise

January 11, 1982

The Honorable James McClure,
United States Senate,
Chairman, Energy and Natural Resources Committee,
Washington, D.C. 20510.

Senate Bill 1867

Dear Senator:

My name is Tom Hovenden and I am the Secretary Manager of the Idaho Cattle Feeders Association with offices in Boise, Idaho. I have been in this position for 16 years and have had over 33 years experience in business in Idaho dealing with our agricultural economy.

Our Board of Directors held their Winter meeting in Twin Falls on Saturday January 9th and instructed me to appear before this committee in support of Senate Bill 1867.

TITLE I

Section 101. We agree that the residency requirements of the 1902 Act have long been outdated and should be removed. People who love the land and spend their productive years producing food should have the option of spending their retirement years at a site of their own choosing rather than one designated by the U.S. Congress.

Section 102. The Equivalency provision must be retained. We feel that it is one of the most important parts of the legislation. It is our understanding that this important provision has not received the emphasis given to other portions of SB 1867. Land can not be compared on an area basis alone. Soil quality, growing season length, altitude and other factors must also be considered because these factors dictate the variety of crops that can be produced in any given area.

Section 103. We sincerely hope that the wording in this section will address the various discrepencies that have occurred through a variety of administrations and loose interpretations of this provision over the past 80 years.

TITLE II

Section 203. We agree with the expanded land limitations that appear in this section. It will be the section or provision creating the greatest controversy. Economics will determine the size of our farms to a large degree.

Cattle Feeders are very independent people. They are not a part of that segment of agriculture that seeks price supports and guarantees or long term, low interest loans. Cattle Feeders, large and small, are independent operators who generally oppose government intervention into their business and resent excessive regulation.

Irrelevant arguments will be made before this committee concerning "the family farm" and "corporate farms". What is a "family farm"? Has any great unerring authority ever made a hard and fast definition of this popular term? We have elected people to the Congress for the past century who have had a plank in their political platform calling for saving the "family farm". In spite of all of this rhetoric, the size of our farms has changed, farming practices have changed and the evolution continues. Economics have been telling small farmers that they must change their operations or get out of business.

And the "corporate farm" seems to be a great evil. Can we deny the man on the farm the use of the corporate conveyance as a business form. A great many of our good farming operations have chosen incorporation as a means of sustaining the life of the operation. Should farmers be denied the use of incorporation to keep their land holdings out of probate court every time they have a death in their family?

We have seen some large corporate farms and they are of two varieties--the sucessful and the failures. The successful corporate farms usually started as small operations that grew larger through careful management. And we see the investment by non-farmers in large corporate farms, these are the unsuccessful ventures.

We have one of these not too far from here. It is called Skyline Farms, located near Ontario, Oregon. It was initiated by a potato processing company. No doubt about it, it was designed to provide cheap potatoes for processing and to be used as a weapon to lower the price paid to area farmers for their potato crop. Through several changes in management, Skyline Farms has been a colossal failure.

Economics coupled with management abilities will determine farm sizes. In my experience with the Cattle Feeders I have found some men who could manage and feed 10,000 head of cattle with ease while others were hard pressed by the responsibilities of feeding 1,000 head. All men have certain inalienable rights, they are born equal as far as these rights are concerned. But all men were no created equal when it comes to management ability, the factor that will determine what size operation they will eventually become involved with.

Overhauling the 1902 Reclamation Act is long over due. It served its purpose well. Hopefully this bill will allow us to work together on our reclamation projects for another four score years.

Senator McClure, we appreciate your efforts to get this problem resolved and offer our sincere thanks for ~~hold~~ holding a committee hearing in Boise.

TOM HOVENDEN
Secretary-Manager

The CHAIRMAN. Thank you very much. I appreciate that statement, and I appreciate your appearance here in support of the Cattle Feeders. I am glad to know there are still some left. Thank you very much.

I understand Mr. Vern Jensen representing the Idaho Bankers Association desires to file a statement for the record rather than testify. We will receive that statement, and it will be made a part of the record when received.

Mr. Allen Cummins from Murtaugh.

STATEMENT OF ALLEN CUMMINS, MURTAUGH, IDAHO

Mr. CUMMINS. Senator McClure, my name is Allen Cummins, and I am a farmer from Twin Falls County, Idaho. I am married and have four children.

I began farming in 1966 with my dad. At this point, my three brothers and I work with my dad in a family corporation. We only own 120 acres of land, but we lease and operate a substantial amount of additional land. I am very proud to be able to work with my family in a single family operation.

Each of my brothers and I have families who are fairly young at this point. It is the future of our children that we are attempting to provide for in our efforts to increase the size of our family farming operation.

The family corporation owns all of its own equipment which we utilize in our farming operation with very little outside help. We do not believe it is economical to buy the sophisticated machinery for farming if you are only farming a small unit. Nor are a bunch of small, little machines as efficient as the larger ones used in the operation of a larger farm.

A larger farming operation can be more economical, and can provide food at a cheaper cost. This benefits both of us, the farmer and the consumer.

We also have purchased sprinklers for irrigation, which are all incorporated into basically a single unit. To split this up and to form several smaller units would not be practical from a farming viewpoint.

In addition, and extremely important to my brothers and me, is our financing. The family corporation has a line of credit which assists us in financing our farming operation. It is through our good name and solid reputation that we have been able to maintain a line of credit of substantial size.

My father has assisted us in establishing this financing and I doubt that any of us sons would qualify for sufficient financing to allow us to economically operate a farm on our own. It is not very likely that I could purchase a farm of sufficient size with fixed, high costs, and make it in today's market. At today's costs, you can't even afford to replace old machinery if you can only operate a small 160-acre farm.

The alleged purpose of the 1902 Reclamation Act was to assist the family farmers. My family exemplifies the concept of family farming. At today's interest rates, I cannot afford to purchase land to farm for myself. Economically and personally I prefer to continue to lease property as we are presently doing and to continue our family farming operation.

There was no leasing restriction in the original 1902 Reclamation Act. I cannot believe that it was the intent of the individuals who wrote this act, that the family farmer, such as myself, should be penalized. It is my feeling that leasing restrictions cannot be justified when you analyze it in respect to farmers like myself. For this reason, I would request no leasing restrictions be put in the new reclamation law.

If it is the opinion of the Senate that a leasing restriction must be placed upon the farmer, this leasing restriction should be in excess of and in addition to any ownership restriction. In that way I will be able to try to provide for my children through the leasing of additional land.

We hire a substantial amount of farm labor through the year. These individuals have less financing than I do, and would not be able to raise the money necessary to operate a farm. In breaking up a farm such as ours, all you do for our laborers is put them out of a job. That is not fair, and I would doubt it is what you people intend to accomplish with the land ownership and leasing limitations.

Someday I would hope to be able to afford to purchase some land for my family. In support of that hope, I would oppose the land ownership limitation. I feel that Senate bill 1867 is the most rational proposal I have seen offered. I would suggest additional acreage be allowed to be owned. This could be tied to a pay-back of costs to the Government such as you have provided for on leasing, if necessary.

I also think a repayment provision is only fair. Upon repaying the Government's costs in a project, there should not be any further limitations. Why should a farmer be restricted after he has paid back the Government's loan? This is true too where no debt exists to the Government, why should the restrictions be applied then?

Last, I would like to state that I feel it is absolutely necessary that the Government honor its word. Numerous contracts exist between the Government and irrigation districts and the Secretary of the Department of the Interior has granted some secretarial exemptions. I have to live up to my commitments, and I think that all of these existing Government commitments should be automatically validated.

In closing, I would like to commend you for your efforts in the reformation of the 1902 Reclamation Act. Thank you for this opportunity to state my views.

[The prepared statement of Mr. Cummins follows:]

Mr. Allen Cummins
500 West Archer
Murtaugh, Idaho 83344

January 8, 1982

The Honorable James McClure, Chairman
Energy and Natural Resources Committee
United States Senate
149 Borah Station
Boise, Idaho 83702

RE: 1902 Reclamation Act Provisions and Boise, Idaho Hearing

Dear Senator McClure:

My name is Allen Cummins and I am a farmer from Twin Falls County, Idaho. I am married and have 4 children.

I began farming in 1966 with my Dad. At this point my three brothers and I work with my Dad in a family corporation. We only own 120 acres of land but we lease and operate a substantial amount of additional land. I am very proud to be able to work with my family in a single family operation.

Each of my brothers and I have families who are fairly young at this point. It is the future of our children that we are attempting to provide for in our efforts to increase the size of our family farming operation.

The family corporation owns all of its own equipment which we utilize in our farming operation with very little outside help. We do not believe it is economical to buy the sophisticated machinery for farming if you are only farming a small unit. Nor are a bunch of little machines as efficient as the larger ones used in operating a larger farm. A larger farming operation can be more economical and can provide food at a cheaper cost. This benefits both of us, the farmer and the consumer. We also have purchased sprinklers for irrigation, which are all incorporated into basically a single irrigation unit. To split this up and to form several small units would not be practical from a farming viewpoint.

In addition and extremely important to my brothers and me, is our financing. The family corporation has a line of credit which assists us in financing our farming operation. It is through our good name and solid reputation that we have been able to maintain a line of credit of substantial size. My father has assisted us in establishing this financing and I doubt that any of us sons would qualify for sufficient financing to allow us to economically operate a farm on our own. It is not very likely that I could purchase a farm of sufficient size, with fixed, high costs, and make it in today's market. At today's costs you can't even afford to replace old machinery if you can only operate a small 160 acre farm.

The alleged purpose of the 1902 Reclamation Act was to assist the family farmers. My family exemplifies the concept of family farming. At today's interest rates I cannot afford to purchase land to farm for myself. Economically and personally I prefer to continue to lease property as we are presently doing and to continue our family farming operation.

There was no leasing restriction in the original 1902 Reclamation Act. I cannot believe that it was the intent of the individuals who wrote that act, that the family farmer, such as myself, should be penalized. It is my feeling that a leasing restriction cannot be justified when you analyze it in respect to farmers like myself. For that reason, I would request no leasing restriction be put in the new Reclamation Law.

If it is the opinion of the Senate that a leasing restriction must be placed upon the farmer, this leasing restriction should be in excess of and in addition to any ownership restriction. In that way I will be able to try to provide for my children through the leasing of additional land.

We hire a substantial amount of farm labor through the year. These individuals have even less financing than I do and would not be able to raise the money necessary to operate a farm. In breaking up a farm such as ours, all you do for our laborers is put them out of a job. That is not fair, and I doubt it is what you intend to accomplish with the land ownership and leasing limitations.

Some day I would hope to be able to afford to purchase some land for my family. In support of that hope I would oppose the land ownership limitation. I feel that Senate Bill 1867 is the most rational proposal I have seen offered. I would suggest additional acreage be allowed to be owned.

This could be tied to a pay-back of costs to the government such as you have provided for on leasing if necessary.

I also think a repayment provision is only fair. Upon repaying the government's costs in a project, there should not be any further limitations. Why should a farmer be restricted after he has paid back the government's loan. This is true too where no debt exists to the government, why should the restrictions apply then?

Last, I would like to state that I feel it is absolutely necessary that the government honor its word. Numerous contracts exist between the government and irrigation districts and the Secretary of the Department of the Interior has granted some secretarial exemptions. I have to live up to my commitments and I think that all of these existing government commitments should be automatically validated.

In closing, I would like to commend you for your efforts in the reformation of the 1902 Reclamation Act. Thank you for this opportunity to present my opinions of this matter

Very truly yours,

Allen Cummins

The CHAIRMAN. Thank you very much. I appreciate your statement. It is an excellent statement, and you have made some very good points.

I would not ask that you answer the question I am about to ask, but if you can, I would appreciate it: In your family farming operation, you and your three brothers and your father are operating together, the five of you?

Mr. CUMMINS. Yes.

The CHAIRMAN. How many acres do you operate in total, the five of you?

Mr. CUMMINS. About 4,000.

The CHAIRMAN. About 4,000 acres and that's five families involved?

Mr. CUMMINS. Yes.

The CHAIRMAN. Now, you have indicated that you own 120 acres of that land. You lease the balance of it?

Mr. CUMMINS. Yes.

The CHAIRMAN. How many different landowners do you lease from?

Mr. CUMMINS. Two.

The CHAIRMAN. Are they people who have lived on the land in the past?

Mr. CUMMINS. Yes.

The CHAIRMAN. So they in effect have lived on the land, and then they have moved away from it, or no longer farm it, and they now lease it to you?

Mr. CUMMINS. They still live on the land.

The CHAIRMAN. They live on the land, and lease to you?

Mr. CUMMINS. Yes.

The CHAIRMAN. But if they were required to be farm operators themselves—let me put it another way: If they were not there, and did not own the land, it would not be available for lease to you, and you could not operate the way you are operating?

Mr. CUMMINS. That's right.

The CHAIRMAN. So it would require someone owning the land who is not actively engaged in farming, or you would not be able to be in business as you are?

Mr. CUMMINS. Yes, sir.

The CHAIRMAN. Thank you very much. I do appreciate your testimony. I think it is a valuable addition to the record.

Mr. Rowdy Davis of Boise.

Mr. DAVIS. Mr. Chairman, I am sorry, but my secretary thought I would be testifying this afternoon, and so my final draft isn't prepared.

The CHAIRMAN. You can come back this afternoon if you would prefer.

Mr. DAVIS. I am prepared to testify, but I will submit my final draft a little later in the hearing.

The CHAIRMAN. That's fine.

Mr. DAVIS. Thank you.

The CHAIRMAN. Sure.

STATEMENT OF FRANK H. "ROWDY" DAVIS, BOISE, IDAHO

Mr. **Davis.** Mr. Chairman, my name is Frank H. "Rowdy" Davis. I am president of an agricultural consulting and management firm here in southwestern Idaho.

Prior to that, I was an agricultural specialist and agricultural loan officer for First Security Bank of Idaho and that was about 10 years.

I hold a master of science degree in agriculture from Texas A.&.M. University. I have been involved in some form of agriculture all of my life.

According to the U.S. Census of agriculture, there are over 23,500 farms in Idaho that have an average size of 660 acres. This includes all farms, dry land and irrigated.

This average size has changed slowly from the early 1900's to present, gradually growing from roughly 200 acres then to the 660 acres now. Most of this change is the result of technology and economic needs, a natural trend evolving out of our free enterprise system.

There are approximately 1,500,000 acres in Idaho which receive water under contract with the United States Bureau of Reclamation. The 1902 Reclamation Act has been of concern to all of agriculture, not only in Idaho, but throughout the United States. All of the problems involved in acreage limitation, residency, commingling of water, and equivalency, and those things, have been foremost in most agricultural minds.

I wish to commend you and others for the introduction of new legislation which could offer resolutions to many of these problems in the near future. My testimony will be brief and to the point relative to the economics of land size of farms in Idaho.

As I pointed out, the average sized farm today is 660 acres, including all farms. And in southwestern Idaho and other areas, smaller farms of 160 to 320 acres oftentimes are economically viable, especially with the growing seasons in excess of 175 days and altitudes lower than 2,800 feet.

They are utilizing class 1 soils and growing seed crops and other high income producing crops; therefore, they can economically compete in the marketplace.

In other areas of Idaho where soil classes may vary from class 1 down to much lower, and with altitudes over 3,000 feet, and with growing seasons of 150 days or less, crops that can be grown, such as alfalfa, hay, and grain, and those kinds of rotation crops, create minimal returns to management.

An unreasonably small acreage limitation will only serve as a stumbling block for many of these farmers in areas that require larger acreages to be economically sound. Even within the ranks of agriculture, there are those who have the philosophy that a small acreage is all that is necessary in order to eke out a living on the land, rather than provide an equitable return for the continued high cost of farming.

It is enlightening to know that there are individuals still existing who are committed to the free enterprise system. That American agriculture can remain strong and dedicated to the successful production of food for our Nation as well as the world.

Any artificial or antiquated limitations will only serve to confound and frustrate the producers of food and expand hunger in the world. Without that continued dedication, the support of Congress and the administration, each one of us in every walk of life will be affected.

I want to thank you very much for the opportunity to testify here today, and urge that you move as rapidly as possible to pass some form of legislation to modify that 1902 Reclamation Act.

The CHAIRMAN. Thank you very much for your testimony.

If we can set aside for a moment the philosophical question of whether or not corporations ought to own land in the reclamation project, based upon your experience that it has been extensive, do you have any idea of what size operation would induce a large corporate conglomerate to buy land in Idaho just for the sake of buying land?

Mr. DAVIS. I am sorry, Senator McClure, but I couldn't answer that question without maybe knowing more about—you know, each corporation would vary. But if you could perhaps elaborate.

The CHAIRMAN. Well, the specter in the minds of many is that if you don't have an acreage limitation, that the benefits of the Federal investment in a water project will be harvested primarily by those who have massive amounts of capital, and that land will migrate into the hands of the large corporations of the world, if not of America, to the exclusion of the family farmer who wants to live on and benefit from their own labor and the management of that land. Is there any kind of a breaking point in the size of farm operations that would indicate that at some point, large corporations might be interested in large farming operations, or would not be interested in small farming operations?

Mr. DAVIS. I have seen various sizes of, you know, farmlands owned by corporations that are anywhere down to, you know, 200 to 300 acres. But I find it very difficult to really pinpoint an acreage that I would say was viable for a large corporation.

But I think that the idea that the corporate structure would then take over family farming is erroneous. I just don't believe that that sort of thing can happen.

It is necessary to have various size farms and acreages, and so forth, to be economically feasible for farming. I don't think it is going to necessarily mean whether it is owned by an individual or a corporation.

The CHAIRMAN. Thank you very much for your testimony.

Mr. DAVIS. Thank you very much.

The CHAIRMAN. Mr. Ken Shufeldt representing A & B Irrigation District from Rupert? Is Mr. Shufeldt here?

[No response.]

The CHAIRMAN. Mr. Frank Davis, Boise, Idaho?

Mr. DAVIS. That's me, Mr. Chairman.

The CHAIRMAN. You are on here twice?

Mr. DAVIS. Yes; I have two different names, sir. That was a mistake on my secretary's part.

The CHAIRMAN. But just one statement?

Mr. DAVIS. Just one statement.

The CHAIRMAN. Mr. Ray Blair, Glenns Ferry.

STATEMENT OF RAY BLAIR, GLENNS FERRY, IDAHO

Mr. **Blair**. Good morning, Senator McClure. I am very happy to be here to testify about this reclamation limitation of acres of 1902 or 1905.

I am Ray Blair from Glenns Ferry, Idaho in Elmore County.

I am a farmer and rancher. I live 8 miles northwest of Glenns Ferry above the rim. That's right across Sailor Creek.

I have eight children, but none of them are on the farm. Life is too good off the farm.

I have 320 acres that come under a desert land grant in 1956.

Blair-Trail formed a partnership, and developed a water project on Little Canyon Creek, a drainage from Bennett Mountain on the east and south side.

Briefly, a storage reservoir that holds 2,580 acre-feet of water, and a flow right from Little Canyon Creek, that produces about 25.6 acre-feet per day.

The farming at the ranch, after we go through the partnership, is each his own, that is, the water is divided at the ranch entrance, and then each partner farms.

I am here to testify that I believe the acreage limitation should be repealed. It was a logical law in 1903, the horse and buggy days. With modern farm equipment, one father or family can farm more land, and increase his production efficiency.

I have mixed emotions about the maximum limit that Congress should finalize in a new law. I believe if you cannot make it if these economics are against you on 320 acres, that if you can't make it on 320 acres, you can't make it on 1,000 acres or you can't make it on 2,000 acres.

The ball park isn't acres. It is what the Government throws at you, society throws at you in that whole economic end of it.

I believe the larger farms have a distinct advantage in purchasing, contracting, selling, and so forth. They all tie up eventually. If you go out to contract some potatoes, it is nicer to contract 3,000 acres of potatoes in one field than it is 30 acres down on a small farm. It makes sense.

But in these mixed emotions, I have to look back over my life span, and wonder where the large farm is. I don't know.

But how about the sheep industry? It might be compared to that in another 30 or 40 years.

When I was a young man, if you didn't own two to five bands of sheep, you were considered a small operator. Well, it's gone, gentlemen, as of today. Will the large farmers follow the same route; and if so, where are we on the cycle?

Now, I don't have this written down, but you were talking about another point if I might take a little more time, and I would like to compare the small farm and large farm with a long-term economic end. I think we could do that, because this law was made in 1902, and it's 1981, so we can consider that a long term.

The **Chairman**. In your terms of mind, at least?

Mr. **Blair**. Yes. I want to compare it with gold, because I think our country is still on the gold standard. Our thinking is still on the gold standard.

When I was a kid, gold was about 17.5. All the farmers walked off in our country, in Power County, and went to town after World War I. You could have all the land you wanted.

They left their houses with the dishes and everything in it. They just left, and never came back. I saw that. I went through that.

My father homesteaded in 1915. And by 1933, why, he had to take out bankruptcy to protect himself. This is the economic end.

They raised the gold to $35. And over the kitchen table, why, you heard people say you should buy land. And as a young man, I didn't know what they were talking about. I didn't realize what they were talking about.

Then a German Jew bought land out there in Power County, and was very successful in selling it for a lot of money lately. And if you didn't buy land, you didn't protect the sheep outfit. You didn't protect your cow outfit, or you didn't protect your irrigated acres.

Now we have threefold, and today it is about $400, and it has been more than that, $600. And I hear that in the next 2 years it is going to go to $1,000 or $1,500. I don't know if that is going to be true or not, but that's what they are prophesizing.

The Chairman. Not all of the gamblers are in Las Vegas.

Mr. Blair. That's right. But wheat is a common crop that is grown in Idaho. We had the cheap food policy, and I guess in Washington, D.C., and then in the hearts of all of the people to the American housewife, and for overseas. It affects the farm. It deeply affects the farm.

In the depression when wheat was 50 cents, you would go aboard a ship, if it was shipped, at about $1. So if gold was 17.5, you could buy 17 bushels of wheat for $17.

And then the depression when it went to 35, you could buy about 35.

But today, gold is about $400. And this wheat that you are shipping out, they can buy 80 bushels with an ounce of gold, and this is breaking America.

They ship the cars back. They buy our wheat. And people don't think that we are in a depression. My idea is, I think it is coming out of Congress, our society, somewhere along the line. They have never had it so good. Russia has never bought any more wheat for an ounce of gold in any time in history than right today.

And with that, I want to thank you for your time.

The Chairman. Thank you very much. I appreciate your testimony this morning.

I don't know that you have indicated where you think the difference is between a large farming operation and a small farming operation, but I was about to ask that question when you said you didn't know that you could answer it.

Mr. Blair. Well, no, I don't know. I know a lot of large farmers.

The Chairman. Individuals?

Mr. Blair. Individuals and corporations. I was president of the Grazing Association for 20 years, and we run 2,000 head of cattle in that association, and so I know where some of the problems lie.

But I think that the man that can wake up with a bright mind, and go out and do his own farming on 320 acres is better fit for society in himself, and everybody.

The **Chairman**. You would prefer a smaller acreage than a larger one?

Mr. **Blair**. That's right.

The **Chairman**. And that's in those relative terms. How about the young fellow who doesn't own any land, and has to go out and buy some land, and pay the high interest rates that are current market, can he operate on 320 acres and make it?

Mr. **Blair**. Well, this last season, I have leased my row crop land, and we have two young operators.

The **Chairman**. But they are leasing, and not buying.

Mr. **Blair**. They are not buying. They are scared to buy. But I think they are making a mistake very much, because you can buy more land with an ounce of gold today than the same in the depression. For $35 an ounce of gold, you could buy $100 acre land. For 3 ounces of gold is almost $1,200. If you are paying $1,200 for an acre of ground, you are doing the same thing as during the depression of the 1930's.

The **Chairman**. I ran that comparison throughout the Midwest in particular, as well as some of the better lands in Idaho, and there is almost an exact relationship as in the mid-1930's to late 1970's and early 1980's.

Mr. **Blair**. But what we have out here that is going on is due to the inflation, and we have a lot of people speculating, and they are in the large farms. Or they sell their farm, and then run it for whoever bought it, because they can't make it. We have all kinds of deals going on in the farming community.

The **Chairman**. Thank you very much. I know of only two large conglomerates or corporations that bought land in Idaho for speculative purposes, and some of it is by rumor, perhaps, not by fact. One was the Chrysler Corp., and the other was the Kennedy Family Trust. Both bought cattle ranching operations in southwestern Idaho, and both of them have sold. Both lost their shirts.

I don't know whether there are other parallels. I am sure there are other large corporations that have bought land in Idaho from time to time.

Mr. **Blair**. Yes, many.

The **Chairman**. But most of them don't continue over a very long period of time, and certainly not over the span of 79 years we are talking about for the Reclamation Act.

But I do appreciate your testimony here today. Thank you very much.

Mr. **Blair**. Thank you.

The **Chairman**. Bob Brailsford from Twin Falls. Was he here earlier? We will call his name again this afternoon.

Are there others who wish to testify this morning before we break?

Mr. John Hatch from the Idaho Farm Bureau?

[No response.]

The **Chairman**. I think that this might be a good time to break. We will break until 1:30 p.m., at which time we will reconvene at this room, and hear the remaining witnesses. Thank you.

[Recess taken.]

AFTERNOON SESSION

The **Chairman**. The committee will come to order.

The first name on the list who was not here this morning is Mr. Russell Brown from Idaho Falls. I don't see Mr. Brown in the room. We'll pass over him.

Mr. Leigh Chantrill, Newdale? Mr. Chantrill I was told was unable to get here today, and I don't see him in the room. We'll return to that name before we adjourn.

Mr. Nicholas Benton, National Democratic Policy Committee from New York?

Mr. Jerry Callen of Jerome? Mr. Callen, you may proceed.

STATEMENT OF JERRY CALLEN, JEROME, IDAHO

Mr. **Callen**. Senator, it's my pleasure to be able to testify here. It's always nice to welcome you back to Idaho.

The **Chairman**. Thank you, it's always nice to be back.

Mr. **Callen**. And I wonder if you brought all this snow with you?

The **Chairman**. Well, no, I didn't. Expect when it started falling, everybody wanted it, and then I was claiming credit for it.

Mr. **Callen**. Mr. Chairman, my name is Jerry Callen. And I am here also representing my wife and three farming sons. We own and operate approximately 1,450 acres in Jerome County, of which 1,250 are cultivated and irrigated with North Side Canal Co. water.

When my wife and I started farming 320 acres in 1956 after spending 4 years in the U.S. Navy, we found this to be adequate to make a living on. As our family grew, new farming practices were developed and inflation increased, we found it more difficult to make ends meet, so in 1961 we bought the neighboring 120 acres, which made a well rounded operation.

In 1973 we were able to purchase a large corporation consisting of 12 farms. We proceeded at once to sell off some of these farms in order to reduce the debt.

We would like to keep the remaining property as a family farm unit, but under the regulations proposed by former Secretary Andrus and the Carter administration, it would be impossible to maintain control while our family is growing up, getting married and deciding if they would like to farm or not.

I would like to address two areas of Senate bill 1867 which are of concern. The first being acreage limitations for family corporations; the other, the ability of an individual to pay out project construction costs.

I would like to see language written into the bill that would allow an individual to pay out his share of project costs to the Bureau of Reclamation, and thereby be exempt from acreage limitations.

Under the economic conditions of today and the desire to write a bill that will solve the irrigators' problems for the foreseeable future, I believe it would be desirable to include language in this bill which would allow a family corporation to own 1,600 acres of land for each immediate family member. This would hopefully allow a family farm to become large enough to be profitable and help such farms to be passed on to future generations.

I believe it is the policy of the Reagan administration to not penalize people for being productive, but to be a friend to the working men and women of America. At this critical time in history, we irrigators need a friend in Washington to help change and rewrite the 1902 law to correspond with modern day farming and for farmers of the future.

A lot of concerned Americans got involved in the 1980 elections, and as a result, we threw the rascals out. And I believe it is now time for you to work diligently and at full speed to change the 1902 law.

At this time, I would like to quote one of our great leaders of the past, Abraham Lincoln. I believe his words are appropriate for today:

> Property is the fruit of labor. Property is desirable, is a positive good in the world. That some should be rich shows that others may become rich and hence is just encouragement to industry and enterprise. Not let him who is homeless pull down the house of another, but let him work diligently to build one for himself, thus by example assuring that his own shall be safe from violence. I take it that it is best for all to leave each man free to acquire property as fast as he can. Some will get wealthy. I don't believe in a law to prevent a man from getting rich. It would do more harm than good.

Isn't this the great American dream?

Senator, I would like to thank you for the opportunity to testify today, and urge you to move as rapidly as possible to secure passage of legislation to modify the 1902 Reclamation Act.

[The prepared statement of Mr. Callen follows:]

SENATOR JAMES McCLURE

MR. CHAIRMAN:

MY NAME IS JERRY CALLEN. I AM also REPRESENTING MY WIFE AND THREE FARMING SONS. WE OWN AND OPERATE APPROXIMATELY 1450 ACRES IN JEROME COUNTY OF WHICH 1250 ARE CULTIVATED AND IRRIGATED WITH NORTH SIDE CANAL CO. WATER.

WHEN MY WIFE AND I STARTED FARMING 320 ACRES IN 1956 AFTER SPENDING 4 YEARS IN THE U.S. NAVY, WE FOUND THIS TO BE ADEQUATE TO MAKE A LIVING ON. AS OUR FAMILY GREW, NEW FARMING PRACTICES WERE DEVELOPED AND INFLATION INCREASED, WE FOUND IT MORE DIFFICULT TO MAKE ENDS MEET SO IN 1961 WE BOUGHT THE NEIGHBORING 120 ACRES WHICH MADE A WELL ROUNDED OPERATION.

IN 1973 WE WERE ABLE TO PURCHASE A LARGE CORPORATION CONSISTING OF 12 FARMS. WE PROCEEDED AT ONCE TO SELL OFF SOME OF THESE FARMS IN ORDER TO REDUCE THE DEBT.

WE WOULD LIKE TO KEEP THE REMAINING PROPERTY AS A FAMILY FARM UNIT, BUT UNDER THE REGULATIONS PROPOSED BY FORMER SECRETARY ANDRUS AND THE CARTER ADMINISTRATION, IT WOULD BE IMPOSSIBLE TO MAINTAIN CONTROL WHILE OUR FAMILY IS GROWING UP, GETTING MARRIED AND DECIDING IF THEY WANT TO FARM OR NOT.

I WOULD LIKE TO ADDRESS TWO AREAS OF SENATE BILL 1867 WHICH ARE OF CONCERN; THE FIRST BEING ACREAGE LIMITATIONS FOR FAMILY CORPORATIONS, THE OTHER THE ABILITY OF AN INDIVIDUAL TO PAY OUT PROJECT CONSTRUCTION COSTS.

I WOULD LIKE TO SEE LANGUAGE WRITTEN INTO THIS BILL THAT WOULD ALLOW AN INDIVIDUAL TO PAY OUT HIS SHARE OF PROJECT COSTS TO THE BUREAU OF RECLAMATION AND THEREBY BE EXEMPT FROM ACREAGE LIMITATIONS.

UNDER THE ECONOMIC CONDITIONS OF TODAY AND THE DESIRE TO WRITE A BILL THAT WILL SOLVE THE IRRIGATOR'S PROBLEMS FOR THE FORSEABLE FUTURE, I BELIEVE IT WOULD BE DESIRABLE TO INCLUDE LANGUAGE IN THIS BILL WHICH WOULD ALLOW A FAMILY CORPORATION TO OWN 1600 ACRES OF LAND FOR

EACH IMMEDIATE FAMILY-MEMBER.

THIS WOULD HOPEFULLY ALLOW A FAMILY FARM TO BECOME LARGE ENOUGH TO BE PROFITABLE AND HELP SUCH FARMS TO BE PASSED ON TO FUTURE GENERATIONS.

I BELIEVE IT IS THE POLICY OF THE REAGAN ADMINISTRATION TO NOT PENALIZE PEOPLE FOR BEING PRODUCTIVE BUT TO BE A FRIEND TO THE WORKING MEN AND WOMEN OF AMERICA. AT THIS CRITICAL TIME IN HISTORY WE IRRIGATORS NEED A FRIEND IN WASHINGTON TO HELP CHANGE AND REWRITE THE 1902 LAW TO CORRESPOND WITH MODERN DAY FARMING AND FOR FARMERS OF THE FUTURE.

A LOT OF CONCERNED AMERICANS GOT INVOLVED IN THE 1980 ELECTIONS AND AS A RESULT WE "THREW THE RASCALS OUT" AND I BELIEVE IT IS NOW TIME FOR YOU to WORK DILIGENTLY AND AT FULL SPEED TO CHANGE THE 1902 LAW.

AT THIS TIME I WOULD LIKE TO QUOTE ONE OF OUR GREAT LEADERS OF THE PAST, ABRAHAM LINCOLN. HIS WORDS ARE APPROPRIATE FOR TODAY.

(Quote) "PROPERTY IS THE FRUIT OF LABOR. PROPERTY IS DESIRABLE, IS A POSITIVE GOOD IN THE WORLD. THAT SOME SHOULD BE RICH SHOWS THAT OTHERS MAY BECOME RICH AND HENCE IS JUST ENCOURAGEMENT TO INDUSTRY AND ENTERPRISE. LET NOT HIM WHO IS HOMELESS PULL DOWN THE HOUSE OF ANOTHER, BUT LET HIM WORK DILIGENTLY TO BUILD ONE FOR HIMSELF, THUS BY EXAMPLE ASSURING THAT HIS OWN SHALL BE SAFE FROM VIOLENCE...I TAKE IT THAT IT IS BEST FOR ALL TO LEAVE EACH MAN FREE TO ACQUIRE PROPERTY AS FAST AS HE CAN. SOME WILL GET WEALTHY. I DON'T BELIEVE IN A LAW TO PREVENT A MAN FROM GETTING RICH: IT WOULD DO MORE HARM THAN GOOD." (End Quote)

ISN'T THE ABOVE STATEMENT THE REAL AMERICAN DREAM?

I THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY AND URGE YOU TO MOVE AS RAPIDLY AS POSSIBLE TO SECURE PASSAGE OF LEGISLATION TO MODIFY THE 1902 RECLAMATION ACT.

Jan. 11, 1982

The CHAIRMAN. Thank you very much, Mr. Callen.

You indicate that you and your wife and three farming sons; how old are your sons?

Mr. CALLEN. I may be a year or so off on each one, but——

The CHAIRMAN. I should always warn a father before I ask that question.

Mr. CALLEN. I think one—the oldest is 28, and 25, and approximately 22.

The CHAIRMAN. And they're still active in the farming operation with you?

Mr. CALLEN. Yes, all except the youngest one, and he seems to like to do a little custom work right now. And he isn't married, he's the only one that isn't married, and hasn't come into the operation yet fully.

The CHAIRMAN. Well, I appreciate your testimony. I notice that the four of you are operating together, irrigating 1,250 acres?

Mr. CALLEN. Yes.

The CHAIRMAN. I also notice that you, in 1973, bought land and then sold off some in order to reduce debt?

Mr. CALLEN. That's right.

The CHAIRMAN. Would it be possible for you today to operate on 320 acres of land? Would it be possible for any of your sons to go out and borrow money and buy 320 acres of land to make a go at it?

Mr. CALLEN. I was afraid you were going to ask me that question, Senator. I think in this day and age it is very, very difficult for a young person to get started. And generally without someone's help, a father or some relative or a friend, I believe it would be next to impossible because of the costs. Whether 320 would be enough, I don't know. It was when I started, but it takes such a tremendous amount of capital.

The CHAIRMAN. How much did you pay for a tractor when you started?

Mr. CALLEN. Of course they weren't very big then, we have to take size into consideration, but I remember the biggest tractor I had then was probably a 40 horsepower and cost about less than—around $3,000. It was always the rule of thumb for years that it was $100 per horsepower, but that has gone out the window. Now probably a 150-horsepower tractor is probably in the $60,000 range.

The CHAIRMAN. Well, I remember when working for the man who is now my father-in-law, he had an old diesel Caterpillar, an old three lunger, pulled seven bottoms at 2.3 miles an hour. It took a lot of days to cover 500 acres of ground.

Mr. CALLEN. Yes, it did.

The CHAIRMAN. Now, his son operating that place has 2 big 4-wheel-drive tractors that pull 10 bottoms at 12 miles an hour. There's some difference in the amount of land you cover.

Mr. CALLEN. I think under economic conditions of today, it's very difficult. Like I say, I think one thing that would surely help the farmers would be higher prices for commodities, and I don't know when that's going to occur. But right now it is very difficult.

The CHAIRMAN. Yes, and the only thing the farmer can do to increase his income is to increase his efficiency and increase the number of units that he puts on the market.

Mr. **Callen**. That's right, that's very right.

The **Chairman**. Thank you very much for your testimony, I appreciate it.

Mr. **Callen**. Thank you, Senator.

The **Chairman**. Mr. Ralph Peters of Jerome?

STATEMENT OF RALPH PETERS, JEROME, IDAHO

Mr. **Peters**. Thank you, Senator.

My name is Ralph Peters and I farm outside of Jerome, Idaho. I am here to support bill No. S. 1867 introduced by Senator McClure which would change the 1902 Reclamation Act.

I am sure that the committee has heard all the social and economic reasons for changing this law, so I would remind those who think this law was cast in gold and cannot be changed that the greatest laws of all times have been changed.

In the beginning, Moses went up to the mountain and brought back the first great laws. Four hundred years later Moses' law was revised and is known today as Deuteronomy.

The Constitution of the United States is one of the greatest pieces of legal work of all times, but how many times has it been amended?

In the future as food is used in our balance of trade and to feed the starving world, the farmer will be asked to produce more. We farmers have proved that we know how to produce, and we have shown we know what we need to produce. Give us one of those things we need, land. Approve Senator McClure's bill No. S. 1867.

[The prepared statement of Mr. Peters follows:]

RALPH B. PETERS
601 E. Ave. A
Jerome, Idaho 83338

My name is Ralph Peters and I farm outside Jerome, Idaho. I am here to support Bill No. S-1867 introduced by Senator McClure, which would change the 1902 reclamation act.

I am sure that the committee has heard all the social and economic reasons for changing this law so I would remind those who think this law was cast in gold and cannot be changed, that the greatest laws of all times have been changed.

In the beginning Moses went up to the mountain and brought back the first great laws. Four hundred years later Moses' law was revised and is known today as Deuteronomy.

The constitution of the United States is one of the greatest pieces of legal work of all times but how many times has it been amended?

In the future as food is used in our balance of trade and to feed the starving of the world, the farmer will be asked to produce more. We farmers have proved that we know how to produce and have shown we know what we need to produce. Give us one of those things we need--land. Approve Senator McClure's Bill No. S-1867.

The **Chairman**. Thank you, Mr. Peters. How much land do you farm?

Mr. **Peters**. We have a little over 400 acres of irrigated land. It's two farms, one is leased out, the other one my son and myself farm it, about 270 acres.

The **Chairman**. Is the 1,600-acre limitation expressed in the bill too high? Will that invite outside ownership to come in and take up farmland that might otherwise be occupied by family farm units?

Mr. **Peters**. Well, I heard one fellow testify this morning that he thought the 320 acres was a proper size, and that if you couldn't handle 320 acres, you couldn't handle any more. But I also know that we had a fellow who was one of the finest machinists that I've known who thought he wanted to be a farmer. He had 40 acres, and he couldn't even grow good wheat. So I think it's all a matter of personnel.

And it seems to me that the corporations that have come in and taken up a lot of ground, most of them have failed because of the fact that they don't have the personnel that can handle it. I don't think size really is the ultimate question. I think the ultimate question is can you handle the job.

The **Chairman**. Thank you very much, I appreciate your testimony. Thank you for coming.

Mr. Don Thibault?

STATEMENT OF DONALD F. THIBAULT, JEROME, IDAHO

Mr. **Thibault**. Senator McClure, my name is Donald Thibault. I live at Jerome, Idaho in Jerome County. My wife Phyllis and I have farmed northeast of Jerome since we were married in 1953 and have been farming continuously for 28 years within a 5-mile radius.

Over these quarter-century-plus years we have managed to acquire a total of 980 acres that we are in various stages of paying for.

My wife and I are presently operating our family operation as a sole proprietorship. This has been, and I hope will continue to be a family farm.

I would like to take this opportunity to inform you on my views on the following topics:

In order to make the payments on our land and provide the machinery, labor, gas, fertilizer and all the other necessary items to farm, we also rent about an equal amount of acres as we own.

During the years that we have been acquiring these acres, it has never been brought to my attention that we have been in violation of some of the rules and requirements of the 1902 Reclamation Act. This being the case even though we have a good attorney and have been doing business and escrowing our contracts with a very reputable and well respected title insurance company who has insured the titles to the land and water we have purchased.

It has been our lifelong goal to acquire enough land to make a good living and then to leave our children a workable unit that they may have the opportunity to continue to work in the most satisfactory life of farming. In order to do these things, the 160-acre limitation is far from being viable. It not only limits a man's ability to achieve, but also in my opinion is contrary to the principles upon which our great United States has grown and prospered.

It has been suggested that we could release all except 160 acres to our family members at this time. It would be a financial burden for us to do this, as we need to have all the backing of the equity in our land to be able to borrow the necessary funds to finance our farming operation.

One of the requirements of the 1902 Reclamation Act is for us to live and die on or near the land. This could be a hardship or even an impossibility for a farmer in case of health problems or a number of other reasons.

In our circumstances the 1,600-acre limit status in Senator McClure's proposed bill, S. 1867, would be the bare minimum.

I believe it is imperative that the North Side Canal Co. contracts be validated at the very earliest date possible thereby making it possible to pay off the reclamation obligation of water development on our lands.

I would like to express my appreciation and gratitude to the committee and Senator McClure for the time spent on this very vital and important issue concerning our future existence in the farming business.

I wish to thank you for the opportunity to convey to you our problems and concerns in this urgent matter and urge the immediate implementation of the bill, S. 1867, to solve this situation.

Thank you, Senator McClure.

[The prepared statement of Mr. Thibault follows:]

Chairman Senator McClure

My name is Donald Thibault. I live at Jerome, Idaho in Jerome County. My wife, Phyllis and I have farmed Northeast of Jerome since we were married in 1953 and have farmed continously for twenty-eight years with-in a five mile radius.

Over these quarter-century plus years we have managed to acquire a total of 980 acres that we are in various stages of paying for.

My wife and I are presently operating our farming operation as a sole proprietorship. This has been and I hope will continue to be a family farm.

I would like to take this opportunity to inform you of my views on the following topics:

A - In order to make the payments on our land and provide machinery, labor, gas, fertilizer and all the other necessary items to farm we also rent about an equal amount of acres as we own.

B - During the years that we have been acquiring these acres, it has never been brought to my attention that we have been in violation of some of the rules and requirements of the 1902 Reclamation Act. This being the case even though we have a good attorney and have been doing business and escrowing our contracts with a very reputable, and well respected Title Insurance Company who has insured the titles to the land and water we have purchased.

C - It has been our life long goal to acquire enough land to make a good living and then to leave our children a workable unit that they may have the opportunity to continue to work in the most satisfying life of farming. In order to do these things the 160 acre limitation is far from being viable. It not only limits a mans ability to achieve but also in my opinion is contrary to the principals upon which our great United States has grown and prospered.

D - It has been suggested that we could release all except 160 acres to our family members at this time. It would be a finanicial burden for us to do this, as we need to have all the backing of the equity in the land to be able to borrow the necessary funds to finance our farming operation.

E - One of the requirements of the 1902 Reclamation Act is for us to live and die on or near the land. This could be a hardship or even an impossibility for a farmer in case of health problems or any number of other problems.

F - In our circumstances the 1600 acre limit status in Senator McClures purposed bill S.1867 would be the bare minimum.

G - I believe it is imperative that the North Side Canal Company contracts be validated at the very earliest date possible there-by making it possible to pay off the Reclamations obligation of water development on the land.

I would like to express my appreciation and gratitude to the Committee and Senator McClure for the time spent on this very vital and important issue concerning our future existance in farming business.

I wish to thank you for the opporunity to convey to you our problems and concerns in this urgent matter and urge the immediate implementation of the bill S.1867 to solve this situation.

Sincerely

Donald F. Thibault

Donald F. Thibault

The CHAIRMAN. Thank you for your testimony.

How many children do you and your wife have?

Mr. THIBAULT. We have five.

The CHAIRMAN. How old are they now, approximately?

Mr. THIBAULT. We have a daughter that's 28 that's teaching school. We have another daughter that's 25 that's a nurse. And we have a son 24 that's in the farming business. I have one son just getting out of the university that is 22, and I have a daughter that's 17.

The CHAIRMAN. You indicated that the 1,600-acre limit is a bare minimum. As I recall, you indicate that you're in some stage of ownership of 980 acres, and traditionally have leased about an equal number of acres to that which you have owned?

Mr. THIBAULT. Yes, that's correct.

The CHAIRMAN. So you're farming in excess of 1,600 acres now in the total unit?

Mr. THIBAULT. Yes.

The CHAIRMAN. Now, the bill provides that you can own 1,600 acres and lease an unlimited amount—lease 1,600 acres in addition to that.

Mr. THIBAULT. Yes.

The CHAIRMAN. Or you could under title I own 160 and lease an unlimited amount.

Can you continue what you believe your family operation will be under a 1,600-acre ownership limitation, and a 1,600-leasing limitation?

Mr. THIBAULT. At this time that would be okay with us.

The CHAIRMAN. But that's at this time?

Mr. THIBAULT. Yes.

The **Chairman**. Well, I hate to pass a bill that's 5 years from now going to be obsolete. It's taken us so long to get to this point that one of the reasons I kind of arbitrarily chose these acreage limitations, aside from what I thought might be able to get through Congress, was also the hope that this would allow a family farming operation to be reasonably successful, not only today, but for the next several years.

A number of people, Ted Diehl for instance, mentioned he's been testifying for 5 years trying to get this law changed. I remember joining what was then the Idaho Reclamation Association in 1953, and we readopted that year something that had been in the resolution for some years before that asking for a repeal of the acreage limitation. So this effort has been going on for 30 years already.

If we enact a bill that today is adequate but will not be adequate for the next few years, we may find ourselves 20 years from now, 25 years from now in the same bind we're in now.

Mr. **Thibault**. The limitation—the acreage limitation bothers me a lot. I just don't like to be restricted on the amount of work that I want to do, and the goals that I want to achieve. But I realize that we can't ask for the moon.

The **Chairman**. Well, thank you very much. I appreciate your testimony. Appreciate your efforts in getting here.

Mr. Warren Shillington? Mr. T. H. Barnes? Mr. Tom Prescott? Mr. Charles Cast of King Hill?

Mr. Bob Goodell, Caldwell?

STATEMENT OF ROBERT A. GOODELL, CALDWELL, IDAHO

Mr. **Goodell**. Senator McClure, my name is Robert Goodell, and I own and operate a farm in the Black Canyon irrigation project, along with my wife and son. Our farm is located 8 miles north of Caldwell, Idaho. We have farmed here for 33 years.

Most of the farms in the Black Canyon project are small compared with farms in some other States and area. However, most farmers here that are making a living from farming are operating more than 160 acres. Under the 1902 law, a man and wife may own 320 acres. If one dies, then 160 acres would have to be sold very cheap. Also, this means a man and his wife can only own 160 acres rather than 320 without getting into excess land problems.

The cost of farm equipment, fuel, fertilizer and most other items needed for the farming operation have increased rapidly over the years while the price of the products we sell have increased very slowly. The only way farmers on the project can stay in business is to spread the high cost of production over more acres.

In 1902, 160 acres of land may have been plenty, but today it would take much more land to compare with 160 acres in 1902.

The residency requirement was probably needed in 1902 to encourage people to settle the sagebrush West and not leave in a short while after they found the going was tough. There is no need for the residency requirement now, and it seems unreasonable for a man and his family to spend years developing and improving a farm and then give it up for almost nothing should they move more than 50 miles away.

Irrigated agriculture has contributed a great deal toward adequate food supplies for the Nation and the world. In order to continue this high production of food, I believe the 1902 Reclamation Act should be updated by increasing the acreage an individual may own or lease and also drop the residency requirement.

I believe these revisions should become law without being approved by irrigation districts or any other agencies as this would complicate the matter. Thank you.

[The prepared statement of Mr. Goodell follows:]

STATEMENT OF ROBERT A. GOODELL, CALDWELL, IDAHO

I own and operate a 400 acre farm in Black Canyon Irrigation Project, along with my Wife and Son. Our farm is located eight miles north of Caldwell, Idaho. We have farmed here for Thirty Three years.

Most of the farms in the Black Canyon Project are small compared with farms in some other states. However most farmers here that are making a living from farming are operating more than 160 acres. Under the 1902 law, a man and wife may own 320 acres, if one dies then 160 acres would have to be sold very cheap. Actually this means a man and his wife can only own 160 acres, rather than 320 acres without getting into excess problems.

The cost of farm equipment, fuel, fertilizer and most other items needed for the farming operation have increased rapidly over the years, while the price of the products we sell have increased very slowly. The only way farmers on the Project can stay in business, is to spread the high cost of production over more acres.

In 1902, 160 acres of land may have been plenty, but today it would take much more land to compare with 160 acres in 1902.

The Residency requirement was probably needed in 1902 to encourage people to settle the sage-brush West and not leave in a short while after they found the going was tough. Their is no need for the residency requirement now, and it seems unreasonable for a man and his family to spend years developing and improving a farm then give it up for almost nothing, should they move more than fifty miles away.

Irrigated Agriculture has contributed a great deal toward adequate food supplies for the nation and the world, in order to continue this high production of food, I believe the 1902 Reclamation Act should be updated, by increasing the acreage an individual may own or lease and also drop the residency requirement. I believe these revisions should become law, without being approved by irrigation districts or any other agencies, as this would complicate the situation.

The CHAIRMAN. Thank you very much, Mr. Goodell.

How old is your son?

Mr. GOODELL. Twenty-five.

The CHAIRMAN. He's actively operating on the farm with you at this time?

Mr. GOODELL. Yes, he farms with me.

The CHAIRMAN. And the two families are living on what's made on your land?

Mr. GOODELL. Yes.

The CHAIRMAN. How many acres do you farm?

Mr. GOODELL. We farm 400.

The CHAIRMAN. Would it be possible for you to have a viable farming operation in that project with less land?

Mr. GOODELL. I don't believe so. As time goes on, it seems like you need to add a little more rather than subtract.

The CHAIRMAN. Well, that certainly has been the history of the immediate past. I don't see anything that tells me that that's going to change in the immediate future.

Mr. GOODELL. Don't seem to be.

The CHAIRMAN. Thank you very much, I appreciate your testimony.

Mr. Peter Link from Hansen?

STATEMENT OF PETER LINK, HANSEN, IDAHO

Mr. LINK. Senator, ladies and gentlemen, my name is Peter Link, and I live in Twin Falls, Idaho. My family and I farm 1,500 acres south of Hansen. And my father first came to the Twin Falls tract early in the century and got the land out of sagebrush, and I carried on from where he left off.

My concern was when Cecil Andrus was Secretary of the Interior, he told my family he was going to take away our land.

He told us they were going to force us to sell any land we own in excess of 160 acres, or they would cut off the water supply to it.

Just as outrageously, they said we would be forced to sell our land to whomever the Government would choose, and at a price the Government would decree. All this would be based on land values the land had while it was in sagebrush.

My family came to the Twin Falls tract in 1910, and my father grubbed the sagebrush out of the ground with a hoe. Their only hobby was work and a lot of it. My father fought jackrabbits, grasshoppers, and 100° heat.

The CHAIRMAN. I hate to interrupt, but if you really admit you fought jackrabbits.

Mr. LINK. I know this is true, and they're still fighting them today, aren't they?

The CHAIRMAN. Excuse me, go ahead.

Mr. LINK. Thank you for interjecting that.

After my father died, I carried on where he left off putting in new land, nurturing it, and making it green where there was only desert before. Right now I have a section of sagebrush land just waiting the cut of the plow, the cooling life giving effects of water, and the tap, tap, tap of a sprinkler to change it from a barren desert into a lush, green, growing thing.

I love my country and the land as much as my life itself, but I abhor the Government effort which Cecil Andrus made which threatens to tear down the work of almost a century that my family has invested in the land.

As far as I am concerned, I will not invest my blood, sweat, and tears, and capital in wrenching another productive acre from the barren desert only to have it confiscated by the Government.

The Twin Falls Canal Co. was bought and paid for with private funds. The Government did not have to put out one thin dime for its construction. And there were not any strings attached like acreage limitations.

But now, after almost a century of documented promises and agreements, and three generations of work and sacrifice, the Andrus Department of the Interior said, "Sorry, but we're changing the rules in the third quarter of the ball game. And if you don't like it, that's your problem."

I am aware, Senator, of your efforts to help us, and the Reagan administration's friendliness toward us. I do approve of your Senate bill, and I hope you will put forth every effort to see that it gets passed. I could live with the 1,600 acre limitation.

[The prepared statement of Mr. Link follows:]

Testimony
of
PETER LINK

When Cecil Andrus was Secretary of the Interior, he told my family he was going to take away our land.

He and the government told us they were going to force us to sell any land we own in excess of 160 acres or they would cut off the water supply to it.

Just as outrageously, they said we would be forced to sell our land to whomever the government would choose and at a price the government would decree.. All this would be based on land values the land had while it was in sagebrush.

My family came to the Twin Falls Tract in 1910 and grubbed the sagebrush out of the ground with a hoe. Their only hobby was work and a lot of it! My father fought jack rabbits, grasshoppers, and 100 degree heat. After he died, I have carried on where he left off, putting in new land, nurturing it and making it green, where there was only desert before. Right now, I have a section of sagebrush land just waiting for the cut of the plow, the cooling, lifegiving effects of water, and the tap,tap, tap of a sprinkler to change it from barren desert into a lush, green, living thing!

I love my country and the land as much as my life itself; but I abhor the government which threatens to tear down the work of almost a century that my family has invested in the land!

As far as I'm concerned, the country can starve to death in the freezing dark before I will invest my blood, sweat and tears - and capital - in wrenching another productive acre from the barren desert only to have it confiscated by the government.

The Twin Falls Canal Company was bought and paid for with private funds. The government did not have to put out one thin dime for its construction. And there were not any strings attached, like acreage limitations.

But now, after almost a century of documented promises and agreements - and three generations of work and sacrifice - the government is saying, "Sorry, but we're changing the rules in the third quarter of the ball game. And if you don't like it, that's your problem!"

There's an old fable that has been revised that makes the point.

(See attached sheet.)

THE STORY OF

THE LITTLE RED HEN

(REVISITED)

Once upon a time, there was a little red hen who scratched about and uncovered some grains of wheat. She called her barnyard neighbors and said, "If we work together and plant this wheat, we will have some fine bread to eat. Who will help me plant the wheat?" "Not I," said the cow. "Not I," said the duck. "Not I," said the goose. "Then I will," said the little red hen, and she did.

The wheat grew tall and ripened into golden grain. "Who will help me reap my wheat?" asked the little red hen. "Not I," said the duck. "Out of my classification," said the pig. "I'd lose my seniority," said the cow. "I'd lose my unemployment insurance," said the goose.

Then it came time to bake the bread. "That's overtime for me," said the cow. "I'm a dropout and never learned how," said the duck. "I'd lose my welfare benefits," said the pig. "If I'm the only one helping, that's discrimination," said the goose.

"Then I will," said the little red hen. And she did.

She baked five loaves of fine bread and held them all up for the neighbors to see. They all wanted some, demanded a share. But the little red hen said, "No, I can rest for a while and eat the five loaves myself."

"Excess profits," cried the cow. "Capitalistic leech," screamed the duck. "Company fink," grunted the pig. "Equal rights," yelled the goose. And they hurriedly painted picket signs and marched around the little red hen singing, "We shall overcome," and they did.

For when the farmer came, he said, "You must not be greedy, little red hen. Look at the oppressed cow. Look at the disadvantaged duck. Look at the underprivileged pig. Look at the less fortunate goose. You are guilty of making second-class citizens of them."

"But...but," said the little red hen. "I earned the bread."

"Exactly," said the wise farmer. "That is the wonderful free enterprise system; anybody in the barnyard can earn as much as he wants. You should be happy to have this freedom. In other barnyards, you'd have to give all five loaves to the farmer. Here you give four loaves to your suffering neighbors." And they lived happily ever after, including the little red hen, who smiled and clucked: "I am grateful. I am grateful."

●

But her neighbors wondered why she never baked any more bread.

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140 Second Ave. N. 733-1449 Twin Falls, Idaho

The **Chairman**. Thank you very much, I appreciate your statement, and I don't disagree at all with the concern that you have stated about the Government changing the rules in confiscating lands that have been earned by hard work. Twin Falls Canal Co. and Twin Falls Tract are one of the more successful experiments in reclamation in the country. And good land and good water and good people as it always takes, and it's good people that always is the equation.

But quite typically, in projects it takes about the third landholder to make it. The first one grubs out the sagebrush, the second one invests a lot of money, and the third one finally makes a go of it. That may be a little less typical of the Twin Falls Tract than it is other places, but it's not all profit, particularly in the early years, it's a lot of hard work.

Mr. **Link**. Thank you, Senator, and thank you for your concern.

The **Chairman**. Yes, and thank you for being here, we appreciate your willingness to come and testify.

Mr. Ken Shufeldt, representing A & B Irrigation District from Rupert?

Mr. Brailsford?

STATEMENT OF ROBERT BRAILSFORD, TWIN FALLS, IDAHO

Mr. **Brailsford**. My name is Robert Brailsford, and I live in Twin Falls, Idaho. My family came here approximately 100 years ago. In this interval of 100 years we have been, my family prior to myself and the third generation that is now taking control of some of these holdings, have been in agriculture operation on a continual basis. My father came here as an immigrant boy from England when he was 15 years old. When he arrived in the southern part of the State of Idaho, he had nothing but the clothes on his back.

We have had the opportunity through our form of Government, through considerations of ourselves as citizens to develop from the point that he started from to the point that I individually am now.

I appreciate the opportunity to participate in a hearing within the geographical reach of people like myself, and concerning a matter which is as vital to the preservation of my own ability to make a living for myself and my family, and for the opportunity for the education of two children that I have in college now.

Your willingness to make the effort to bring the functions of Government directly to the people whose lives will be affected reinforce our belief in our government.

May I commend you and the cosponsors for introducing bill S. 1867. I address myself to those sections of the bill which will bring realism to the applications of governmental directives as they apply to the size of the family farms.

EQUIVALENCY

The numbers of acres needed to make a farming unit viable vary greatly from area to area, and in many instances within farming areas. The use of class 1 production potential is a good one, one that in most instances could be determined by governmental agencies such as the Agricultural and Stabilization Service, the various land grant colleges and the Department of Agriculture's soil and water resource stations that are located in various areas of our country. This opportunity to make educated judgments on soil classifications leaves little room for contention.

RESIDENCY

In a large sense, history records that those societies which restricted people to their own small areas eventually brought divisiveness and fragmentation to those societies, groups confronting groups. In a narrower sense, I ask since when is it to become the policy of a democratic government to tie individuals to their land. And if they choose not to submit, penalize them to the extent of taking from them their private property, and in such an arbitrary manner that would amount to confiscation.

RECORDABLE CONTRACTS

The provisions under this section of the act defines what has been practiced by precedent and statute between our Government and its people. We as citizens owe to our Government the responsibility, and we are forced to do so, to fulfill our obligations to that Government even though those obligations have been handed to us by our predecessors. We should expect no less consideration from our Government when an agency of that Government makes a contact with its citizens. The validation of these existing contracts is nothing more than the Government living up to what it committed itself to do.

I have particular concern for all of the segments of the act that herein are brought to your attention. It appears to me that there is general acceptance for the provisions not mentioned in this review, and I support the act and your effort to pass and implement it wholeheartedly.

Just prior to the time Secretary Andrus was to implement the 1902 Reclamation Law and the extended regulations that he and his staff intended to put in place, I wrote to you a letter examining the possible effects of the law, and to the new regulations that were promulgated.

One of my particular concerns then and still remains was to the effects of the commingling provisions of the law. In my particular case, I own 350 acres of irrigated land under the Twin Falls Canal Co. irrigation system, and I believe the act will serve to preserve a viable ownership. However, I also laid the foundation for the development of an additional 2,000 acres of land and owned another 175 acres whose water supply comes from the Bickel Springs, a part of the Thousand Springs group located on the north bank of the Snake River in Hagerman Valley, and from the Snake River itself.

In what might be now a far-out thought, but which at some later date would not be considered to be so, the commingling provisions of the 1902 law could affect the water rights of every irrigator from the Government constructed dam at Henrys Lake to the mouth of the Columbia River. Water is intermittently released from all of the dams in the upper Snake and mingled with the normal flow of the river creating in fact a commingling effect.

And if I read the 1902 law correctly, making anyone drawing water from the Snake River subject to the 1902 law.

These interpretations bring me to the conclusion that the enactment of bill, S. 1867, is as imperative for the benefit and protection of those farmers who do not draw water from the reservoirs constructed by the Government, but whose waters are commingled with the Government controlled waters.

I would like to state one more thing. When my father acquired his first piece of property, he bought 40 acres in the Hagerman Valley. And the only subsidation that my family has had in that interval was an additional 160 acres that lay adjacent to that 40 acres that my father homesteaded in 1902.

So really, the development of many people like myself, and I refer back to Pete and his father, Peter Link, has been through individual effort, the acquisition of these lands by the willingness to put ourselves under financial stress, and of the willingness to overcome those things and develop a viable farming unit.

I would like to take the opportunity to thank the Senator for being here and making possible the opportunity for 'we people in this locality to make a direct statement to you that refers to our particular concerns about the 1902 law.

[The prepared statement of Mr. Brailsford follows:]

1964 Filer Avenue East
Twin Falls, Idaho 83301
January 9, 1982

The Honorable James McClure
Chaiman, Senate Energy and Natural Resources Committee
Washington, D.C.

Dear Senator:

The opportunity to participate in a hearing within geographical reach of people like myself and concerning a matter which is as vital to the preservation of my own ability to make a living for myself and my family and to afford the education of two children in college is deeply appreciated.

Your willingness to make the effort to bring the functions of government directly to the people whose lives will be affected, reinforces our belief in our government.

May I commend you and the co-sponsors for introducing Bill S.1867. I address myself to those sections of the bill which will bring realism to the applications of governmental directives as they apply to the size of family farms.

Equivalency:

The numbers of acres needed to make a farming unit viable vary greatly from area to area and in many instances within farming areas. The use of Class I production potential is a good one; one that in most instances coule be determined by governmental agencies such as the Agricultural and Stabilization Service, the various land grant colleges and the Department of Agricultures soil and water research stations, located in various areas of our country. This opportunity to make educated judgements on soil classification leaves little room for contention.

Residency:

In a large sense, history records that those societies that restricted people to their own small areas eventually brought divissiveness and fragmentation to those societies, groups confronting groups. In a narrower sense, since when is it to become the policy of a democratic government to tie individuals to their land, and if they chose not to submit, penalize them to the extent of taking from them their private property, and in such an arbitrary manner that would amount to confiscation.

Recordable Contracts:

The provisions under this section of the act defines what has been practice by precedent and statute between our government and its people. We as citizens owe to our government the responsibility, and we are forced to do so, to fulfill our obligations to that government even though those obligations have been handed to us by our predecessors. We should expect no less consideration from our government when an agency of that government makes a compact with is citizens. The validation of these existing contracts is nothing more than the government living up to what it committed itself to do.

I have particular concern for all of the segments of the Act that herein are brought to your attention. It appears to me that there is general acceptance for the provisions not mentioned in this review and I support the Act and your effort to pass and impliment it whole--heartedly.

Just prior to the time Secretary Andrus was to impliment the 1902 Reclamation Law and the extended regulations that he and his staff intended to put in place, I wrote you a letter examining the possible effects of the law and to the new regulations that were promulgated.

One of my particular concerns then and still remains was to the effects of the comingling provisions of the law. In my particular case I own 350 acres of irrigated land under the Twin Falls Canal Co. irrigation system and I believe the Act will serve to preserve a viable ownership. However, I also laid the foundations for the development of an additional 2000 acres of land and owned another 175 acres whose water supply comes from the Bickel Springs, a part of the 1000 Springs group located on the north bank of the Snake River in Hagerman Valley, and from the Snake River itself.

In what might be now a far-out thought, but which at some later date would not considered to be so, the comingling provisions of the 1902 law could affect the water rights of every irrigator from the government constructed dam at Henrys Lake to the mouth of the Columbia River. Water is intermittantly released from all of the dams on the upper Snake and mingled with the normal flow of the river creating in fact a comingling effect and if I read the 1902 law correctly, making anyone drawing water from the Snake subject to the 1902 law. These interpretations bring me to the conclusion that the enactment of Bill S.1867 is as imperative for the benefit and protection of those farmers who do not draw water from the reservoirs constructed by the government but whose waters are comingled with the government controlled waters.

The recognition of the concerns of the water users of the State of Idaho and the request that they make their concerns known to you brings from me a commendation for your efforts.

Yours very truly,

Robert Brailsford

Robert Brailsford

The CHAIRMAN. Well, thank you very much. I very much appreciate your testimony here. You know, it's the people who are affected by the statutes who know the most about it. The people who are actively out on the land doing the farming know more about it than any other collection of people anywhere in the world. And for that reason, I particularly appreciate the testimony of the Idahoans who have been here today to tell me and through me to tell the committee and the Congress exactly what the facts are, what really does exist in the real world that is some distance from our Nation's capital.

I do appreciate your testimony.

Mr. BRAILSFORD. Thank you, Senator.

The CHAIRMAN. Yes; thank you.

Mr. John Brandt?

STATEMENT OF JOHN H. BRANDT, NAMPA, IDAHO

Mr. BRANDT. Thank you, Senator McClure. I didn't prepare any written testimony, I didn't know that was required. I just wanted to come visit with you a little bit and tell some of my experiences and observations.

The CHAIRMAN. It isn't required, we welcome your comments.

Mr. BRANDT. My name is John Brandt, and I live on a farm north of Nampa.

Some of these testimonies recall things to me. When I was 1½ years old, I was in a tarpaper shack down on the Twin Falls project where my dad was developing some sagebrush land, so it's been in the family for many years.

After I got out of college, I taught school 10 years, and then started farming north of Nampa for a number of years. Even at that time—I'm now 77 and almost 78 years old, so it's quite a while ago. Even at that time, there were combinations of farms necessary to make a good living. I farmed 190 acres at that time, and that constituted what was originally four farms. Now, those are combined in a unit which I rent out which would be about twice that many.

Before I go any further, I'd like to challenge the idea of subsidized water. I think that's completely false. I'd like to take the Deer Flat Reservoir project for an example. Every dime that was put out by the Federal Government is to be repaid for that. If anything, the farmers are subsidizing the hunters, boaters, and recreationalists by making that available to them free. It's true that some of the later projects have allocated certain portions of the cost to flood control, to recreation, and so forth, but as far as the irrigation part of it, the farmers pay every dime back. The only way that they could remotely call it subsidize is to say that they didn't charge interest on it.

But to me, this is the finest investment anyone could make, let alone the Federal Government.

Think of the millions, multitude of millions of dollars in taxes that have derived from these projects to offset any interest that might not have been achieved otherwise. So I don't know how they ever got that idea of subsized water started, but it is certainly a false concept.

As illustrated in my own experience, the small farmer just can't survive now. He has either sold out and gone into something else, or he's rented other land, or he has a job and does this on the side. That's the only way that they can continue on some of the smaller farms.

And I assure you that the ownership of land isn't anything very profitable right now. It hasn't been for a number of years as a matter of fact.

It's a sad commentary that the most efficient segment of our entire economy, the agricultural segment, is the poorest paid. You can't name to me any othe phase of our society, not the railroads or the steel mills or the bicycles or watches, anything you want to name that somebody else in the world is doing a better job than we are doing now. It's sad to say, but not with the farmers.

Part of the reason that farmers are more efficient is that they through machinery are making better utilization of their own labor. You asked a while ago about the tractors, and the first tractor I bought was a Ford, and it cost $675, and boy was I a proud kid. I thought that was really something. But that today would be impossible to use profitably and make a living. It's more apt to be $67,500 or more.

So, it's very evident that more land is needed, and somebody has to supply that land. And many, many times it's the former farmer who has acquired land that does rent it out to other people.

I have some land myself that I no longer farm that I rent out. And I can prove to you, if you want the figures, that from 3 to 5 percent is the maximum I can make on that, and I have good land and good farmers. It's the expensive machinery that's necessary, and yet the depreciation and the interest goes right on whether you use it on 40 acres or 4,000 acres.

So, it's very necessary to make the full use of that machinery, and the labor that goes with it.

Another thing that strikes me as extremely important, we give lip service to the family farm, and yet for example I have a man named Lawrence Gray who has two farmer sons farming the land that we have north of Nampa. He also has a farm of his own, he farms other people's land and is doing a better job than I did, and I did a better job than those who were before me because we have better seed, better fertilizers, and better knowledge of how to go about it.

If you want to destroy the family farm or destroy the farm family, then just cut it down to a point that when the young boys come on they can't take on and help their dad out and expand to where it's profitable, they have to get into something's else. And I don't think that's right.

I started three boys that I can think of, Lawrence Gray, his brother-in-law Jacobson, and Morris Clemmons, all of who are now farming big 3,000 acres or so and doing a fine job at it.

The CHAIRMAN. When you say you started them out, you mean you rented ground to them?

Mr. BRANDT. Right, that's the only way they could get started.

The CHAIRMAN. Thank you.

Mr. BRANDT. Another observation. We have established as a government the Farmers Home Administration. Two things are bad about it. First of all, they got far afield from what they were originally established for, and now they're making loans on half acres and so just so they're outside of the city, and that's not the purpose in my opinion of the Farmers Home Administration.

Second, it's extremely difficult, even with the help that the Government gives by certain lower interest rates and one thing or another for a Farmers Home boy to get a go at it. The only way he can do it is to have some other help to get adequate machinery, and then rent some additional land because the 80 acres or whatever he could buy through that source is just not enough to make a living on.

Another thing, I'd like to challenge the residency requirement. Part of my business is farm management now. I look after a farm of about—well, about 300 acres in each place, one near Marsing, and one near Nyssa. These were grubbed out of the sagebrush by—well, an old lady now, but she was a young lady then, and her name is Marie Downing who lives in Pocatello. Her husband and her actually took that out of the brush and made a farm out of it and still own it. And it would be extremely unfair to this old lady to say she had to live on the farm or within a few miles of it. She made the farm, her family made the farm. It wouldn't be there if they hadn't made it. And yet to force them to sell it just because of the fact that they are old doesn't seem to me logical.

This one farm near Marsing is operated by two brothers named Momberg, Bruce Momberg and John Momberg. Their father and their uncle are owners of some land there, and Bruce is the older boy, he's acquired—well, I guess they have both acquired a small farm, but the only way on earth they can pay for that small farm now under the present commodity prices is to rent some additional land. They welcome the opportunity to rent this land of Mrs. Downing, and they're doing a good job. They're raising high yield crops, and both she and the renters benefit as well as the whole Nation.

We express our fear of the corporate farms, at least in this area under my observation that hasn't been a fear. I think of one over near Weiser developed by Ore-Ida, and one almost adjacent to it developed by the Batt family. The Batts made a go of it, Ore-Ida made a failure of it. They have reorganized and resold and so on, and eventually that Ore-Ida farm may get into hands where they will make it go. But only because they rent it out, or some other means of an incentive to do the best.

I'd like to finish with that word. It seems to me that that which has made America has been the incentive to give it all we have, do our very best. Work hard, and that's what has developed the country. Anytime we do anything—well, maybe it's aside from the question, but such things as embargos on wheat, wheat seems to be the bellwether and down go the prices, and the other stuff still stays up. Anything we can do that destroys the incentive to do our best, whether it be in farming or anything else as a matter of fact, but certainly in farming which is my life, why, anytime you destroy that incentive to develop some more land or do a better job, then we're on the downhill grade, and we're doomed to destroy our society.

The CHAIRMAN. Thank you very much for your testimony. And I particularly appreciate the point that you made with respect to the Lawrence Gray family. I think a good example of a family is by the deeds of good hard working and good management skills has been able to start—was able to start only by first renting land, and then going through that into a successful farming operation. I think we're all familiar with the difficulties of passing land from generation to generation, but we oftentimes forget to look at the difficulty of a young fellow that doesn't come from a farming family but wants to get into farming, and the difficulties he has.

Mr. BRANDT. Well, that's part of it, and part of it is the fact that if they're already in, and then the limit is there, they can't make a go of it. It just takes the boy out of the farm.

The CHAIRMAN. That's an excellent point, and I appreciate your testimony. We've learned over the years to expect good sound advice from John Brandt, and we've had it again today. Thank you.

John Hatch, Idaho Farm Bureau.

STATEMENT OF JOHN L. HATCH, IDAHO FARM BUREAU FEDERATION, BOISE, IDAHO

Mr. HATCH. Thank you, Senator. I'm really batting a thousand. I missed the first call this morning, and now I show up without my five copies. We have problems with my copying machine at our office, and I will get them to you sometime this afternoon.

I appreciate the opportunity to testify on behalf of the Idaho Farm Bureau Federation. My testimony will be brief, as I feel that you have probably heard most of the points that I will be bringing out, and I know that you've already heard from a large number of farmers who have traveled long distances to be here to express their feelings to you today. and I know that those are the ones that you are most interested in hearing from at this field hearing. I'm glad there was a good number of them able to turn out because in making my contacts with individuals about this hearing, I found that a good many of our people who would like to testify were heading for the American Farm Bureau Convention in San Diego, and it's not hard for me to see their reluctancy to change their plans.

And President Oscar Field sends you his warmest regards.

I would like to convey to you the Farm Bureau's appreciation for making reform of the 1902 Reclamation Act one of your highest priorities. We just hope you can convince the whole Congress that this issue needs their immediate and positive consideration.

As you are well aware, the Department of Interior reopened comment on the previous administration's proposed rules and regulations. The Bureau of Reclamation should be close to promulgating their final environmental impact statement on these proposed rules. It is imperative that new rules and regulations be based on an updated and modernized law rather than the present antiquated one.

There are just a couple of specific items I'd like to touch on because most of the points of the issue have been hashed over and over. As I read the legislation, it still leaves open the question of what happens in situations where small amounts of reclamation water are commingled with another primary source of water.

Farm Bureau recommends that wording be added to S. 1876 to clarify this problem and exempt operations receiving less than 25 percent project water from the purview of the law.

Again, as I interpret the legislation, in order for an individual operator to take advantage of the expanded acreage provisions of the legislation, it will be necessary for irrigation districts to amend their contracts. Amending these contracts can be confusing, time consuming, and a costly venture. If at all possible to amend the legislation to allow the necessary flexibility to the individual operator without the necessity of rewriting the contracts, Farm Bureau strongly urges you to do so.

Chairman McClure, this issue has been hanging as a cloud over agriculture for too many years. I don't know what it is going to take to bring Congress to an understanding of the urgency of the need for reform legislation, but we thank you for your continued determination to bring about a resolution of the problem.

The CHAIRMAN. Thank you very much, I appreciate your testimony, and I appreciate the position of the Idaho Farm Bureau Federation. You have been very helpful, and I'm sure that both through the Idaho Farm Bureau and the national organization, we'll look forward to continued help and support for reasonable legislation as it moves through the Congress.

Mr. HATCH. Thank you, Senator.

The CHAIRMAN. Thank you.

Mr. Joe Hobson from Ontario, Oreg.?

STATEMENT OF JOE HOBSON, ONTARIO, OREG.

Mr. HOBSON. I apologize for not having written testimony.

The CHAIRMAN. That's fine, we're very glad to have you here.

Mr. HOBSON. It's certainly a privilege on our part to be able to be here today.

My name is Joe Hobson, Ontario, Oreg. I farm 400 acres in Oregon and in Payette County, Idaho. My wife and I own 160 acres, and we rent the balance.

There are about four items that I think should be addressed again. From the standpoint of the residency requirement, as an example, my parents bought 160 acres in 1937 on the Owyhee project in Oregon for a total dollar amount of $1,200. And in that amount was included a tractor, plow, disk, and a harrow.

My father died in 1969. With the implementation of a 1902 reclamation law, my 93-year-old mother would have to leave the farm where she has lived since 1937 because the land is in an estate, and some of the heirs live over 400 miles away. In fact, one lives in Kansas, and one lives in Portland.

So with the implementation of the 1902 law, being an estate, we would have to settle the estate, Ma would have to leave the farm and move someplace else, to town.

So, we urge that that—and we commend you for including the deletion of the residency requirement. And this is just another reason why it must be done. Nothing to do with the corporate farming, but for a person who has given their life for a farm, it seems unreal to have to leave.

Another area, and that's amending of existing contract. I have with me an old abstract of title on that particular farm. And in that abstract of title is a copy of the contract between the irrigation districts and the Bureau of Reclamation. And I'll read from this a statement from this contract that I haven't heard anyone here yet address. And that is,

> If any of the lands of the district are sold at an incremented value as defined in Subdivision B of this article, the vendor shall pay to the district, or the vendee shall pay to the district out of the money which would otherwise have been payable to the vendor an amount equal to 50 percent of the sum incremented value.

Many farms in these irrigation projects on the Owyhee have been sold several times, and to my knowledge, that portion of the contract has not been enforced. In fact, on the next page of this contract is the appraised value of the folks' farm, and as of 1926 it was $1,141. The value today is approximately $320,000 on a 160-acre farm.

If and when that farm for some reason has to be disposed of, there is a tremendous amount of dollars involved there that would have to be—if the contract is enforced, would have to be divvied up to an irrigation district or some other entity.

So I would urge that in solving these other problems, that this problem also should be addressed.

As to acreage limitation in Senate bill 1867, from our operation, it seems reasonable at this time.

We have—you raised the question of corporate farms in the area. We have, as you well know and referred to, the Ore-Ida Farm, Skyland Farms that started out as a corporation farm. It went the full gamut, and I can recall when Heinz still had ahold of it, the tiger they couldn't turn loose. They felt like they had really succeeded when they got the losses per year down to around $3 million. Since that time, they have got out of it, and it has gone through several ownerships, and this past year evolved back to where there is a group of farmers farming certain portions of it.

And like you stated earlier, corporate management when we think of a conglomerate corporation management, it just falls short. So we have found that it is not all that much of a threat.

We have another corporation in our area that has been increasing their acreage, and that is Desert Seed Co. They used to be owned by a family, couple of farmers, a man who is a farmer and his sons in California. He now has sold out to Arco, in other words Atlantic Richfield. They have been farming land, and it has become a ludicrous joke in Malheur and Payette County how inefficient their operation is, and how much they must be losing.

And possibly at the time when it was owned by the family, they had other means of recovering those losses, but now that a conglomerate corporation owns it, now the bets are out on how long they'll stand that kind of losses in that kind of an operation that they run.

So, we don't really fear what is considered as the traditional corporate farming operation as a threat to individual farmers in our area.

This matter of commingled water we have talked about, and it has been referred to in previous testimony. But there is another aspect, I think, to our knowledge that has not been addressed. So legislation is needed to make sure that cattle ranches, I'll use that term, along the main stem of the Malheur River and the Owyhee River situated between a reclamation built reservoir and where the water is used does not come under the acreage limitation which is approximately 80 miles away.

And these ranchers have water rights that predate even the construction of the reclamation projects, back into the 1800's.

And I did a very quick survey some years back, and that covers about 1,800 acres of irrigated meadowland that lies between the Buhl Reservoir and Vale, Oreg., some 80 miles away.

So, the legislation needs to be sure that we're not bringing those ranches in under the Reclamation Law. It was our interpretation of what Mr. Andrus had proposed that it would have brought those cattle ranches under it, and they certainly had no desire to be under it.

And all of us know that if a cattle rancher had to exist under the acreage limitation, it would be hard to just maintain an old milk cow let alone a viable ranch operation.

And I certainly concur with one of the previous people who testified that we get sick and tired of people saying we are getting subsidized water. We're definitely not, we're paying every dime back that the Government invested, besides providing on the Owyhee project one of the finest fisheries and the finest recreational facilities available.

I want to thank you, Senator McClure, for coming to our area and allowing an Oregonian an opportunity to present testimony. We feel more comfortable with people of your caliber in charge of the committee now than we did for some time.

The CHAIRMAN. Well, I thank you for the personal comment, but I also thank you for the testimony, Mr. Hobson. And I appreciate the statement of confidence you have made in regard to your ability in your area, not just personal ability, but those of your friends in the same area to compete with so-called corporate ownership.

I sometimes think that is a big bugaboo, and I suspect that when people see one of the oil companies buying farmland, they tend to say, oh-oh, here we go again. But my tendency is to believe as you apparently believe that that's only temporary, and they'll get tired of that pretty soon.

Mr. HOBSON. Right.

The CHAIRMAN. Thank you very much, I appreciate your testimony.

Are there others in the room who wish to testify who have not been heard, whether your name appears on the witness list or not?

I will assume that those who had asked the right to testify, the opportunity to testify and are not here, found it impossible for one reason or another to be here today.

We will receive their testimony and make it part of the record when submitted to us. I would remind others that whether you have heretofore requested the opportunity to testify or not, the hearing records will be kept open for 2 weeks, and we will receive any statements or supplemental materials that are submitted to us during that 2-week period for the record on this proposed legislation.

If there are no others who desire to be heard, then we'll conclude our hearing, and the meeting is adjourned.

[Whereupon, at 2:52 p.m. the hearing was adjourned.]

APPENDIXES

APPENDIX I

Answers from the Department of the Interior to Additional Questions of Senate Jackson

December 18, 1981

Honorable James G. Watt
Secretary of the Interior
Washington, D.C. 20240

Dear Mr. Secretary:

Enclosed are questions I have regarding the Department's views on S. 1867, the bill that would amend Federal reclamation law. Because the Committee may proceed to mark-up the bill soon after returning from the recess, I would appreciate a response as soon as possible.

Thank you for your attention to this matter.

Sincerely yours,

Henry M. Jackson
Ranking Minority Member

CG:jw

Enclosure

CC: Honorable Robert Broadbent
Commissioner, Bureau of Reclamation

1. In your December 7 letter you suggested a change in the way the interest rate is calculated in the definition of "full cost" contained in Section 201(d).

(a) Are there any other respects in which you believe that the definition of "full cost" in Section 201(d) fails to reflect the actual cost of delivering irrigation water?

(b) Section 201(d) begins by stating that "The term "full cost" means all construction costs of facilities in service which are properly allocable to irrigation,..." (emphasis added). If this language became law, would the Department interpret it to mean "all construction costs properly allocable to irrigation, prior to calculating the repayment capacity of the farmers," or "all construction costs properly allocable to irrigation, after calculating the repayment capacity of the farmers"?

(c) Section 201(d) also states that interest shall accrue "from the date of a new or amended contract pursuant to this title on costs outstanding at that date,...". If this language became law, would the Department interpret it to exclude interest accruing on the cost of an existing project between the date the cost was incurred and the date of the new or amended contract?

2. In your December 7 letter to Chairman McClure, and in your December 10 testimony before the Committee, you supported the provisions in S. 1867 that exempt Corps of Engineers projects from the reclamation laws.

(a) Why does the Department support this exemption, in view of the fact that Corps projects often provide significant irrigation benefits?

(b) Please list all Corps projects that provide a benefit to irrigators, including the name and location of the project and the authorizing legislation.

(c) Which of the Corps projects referred to in question 2(b) are currently subject to the reclamation laws?

(d) Assuming that some of the Corps projects referred to in question 2(b) are currently subject to the reclamation laws and some are not, what is the basis for the distinction?

(e) Please list all Corps projects that would be exempted from the reclamation laws by the provisions of S. 1867.

3. In your December 10 testimony you specifically stated that the Corps projects on the Kings, Kern, Kaweah, and Tule Rivers should be exempt from the reclamation laws.

(a) Why does the Department support these exemptions?

(b) In your view, does Section 104 of S. 1867 exempt these projects?

4. Section 103(a) of S. 1867 essentially provides that irrigation water from projects constructed after the date of enactment shall not be delivered for use on excess lands until the owner has executed a recordable contract requiring disposal of the excess lands within a reasonable time. Such reasonable time is to be established by the Secretary, but shall not exceed ten years after the initial delivery of water.

(a) Are there any reasons why a farmer who receives water from a new project should be given up to ten years after initial water delivery to dispose of his excess lands?

5. Under Section 103(b), which applies to existing projects, it appears that the Secretary's discretion is not limited regarding the length of time within which disposal is required by the recordable contract.

(a) Does the Department feel that there should be a cap under this subsection?

(b) If so, what limit does the Department suggest?

6. If Section 106(g) became law, in what types of situations would the Department find it applicable? Approximately how much total acreage would be made exempt under this provision?

United States Department of the Interior
BUREAU OF RECLAMATION
~~WATER AND POWER RESOURCES SERVICE~~
WASHINGTON, D.C. 20240

IN REPLY
REFER TO: 410
100

Honorable Henry M. Jackson
United States Senate
Washington, DC 20510

Dear Senator Jackson:

Thank you for your December 18, 1981, letter to Secretary of the Interior James G. Watt transmitting a number of questions you have regarding the views of the Department of the Interior on S.1867, the bill that would amend and supplement the acreage limitation and residency provisions of Federal Reclamation law. Our responses to your questions are set forth below. We have repeated your questions and provided our answers immediately following the question:

Question:

"1. In your December 7 letter you suggested a change in the way the interest rate is calculated in the definition of "full cost" contained in Section 201(d).

(a) Are there any other respects in which you believe that the definition of "full cost" in Section 201(d) fails to reflect the actual costs of delivering irrigation water?"

Answer:

The definition of full cost as proposed in S.1867 includes all project construction costs that are allocable to irrigation. Interest during construction is included in the construction costs and an appropriate share of such interest is allocated to irrigation along with other costs so allocated. Project costs allocated to irrigation are to be repaid to the Federal Government in full; however, they are by law, interest free. Under S.1867, any interest costs to the Federal Government on its investment in the Reclamation project facilities to the date of a new or amended contract under the Act would be foregone; however, as set forth in Section 210(d) interest would be applied prospectively. The full cost definition we proposed in our December 7, 1981, letter to Senator James McClure giving the Department's views on S.1867 would apply interest as of the date of the Act for existing projects or from the date costs are incurred in the case of new contracts. In addition, our proposal includes current operation and maintenance costs. We believe our proposal reflects the actual costs of delivering water except for foregone interest.

Question:

> "(b) Section 201(d) begins by stating that "The term "full cost" means all construction costs of facilities in service *which are properly allocable to irrigation*,..." (emphasis added.) If this language became law, would the Department interpret it to mean "all construction costs properly allocable to irrigation, prior to calculating the repayment capacity of the farmers," or "all construction costs properly allocable to irrigation, after calculating the repayment capacity of the farmers"?" .

Answer:

If Section 201(d) becomes law, we would interpret "all construction costs of facilities in service which are properly allocable to irrigation" to apply to the total construction costs that are allocated to irrigation less credit for payments that have been made. We would not include interest on the Federal investment made in the project facilities prior to the date of a new or amended contract. This determination would not reflect the repayment capacity of the farmer but would be the total unpaid construction costs allocated to irrigation.

Question:

> "(c) Section 201(d) also states that interest shall accrue "from the date a new or amended contract pursuant to this title on costs outstanding at that date,...". If this language became law, would the Department interpret it to exclude interest accruing on the costs of an existing project between the date the cost was incurred and the date of the new or amended contract?"

Answer:

We would interpret Section 201(d) in S.1867 to exclude interest from the date the cost to the Federal Government was incurred to the date of the new or amended contract. Our proposal would exclude interest from the date incurred to the date that S.1867 becomes law for existing projects.

Question:

"2. In your December 7 letter to Chairman McClure, and in your December 10, testimony before the Committee, you supported the provisions in S.1867 that exempt Corps of Engineers projects from the reclamation laws.

> (a) Why does the Department support this exemption, in view of the fact that Corps projects often provide significant irrigation benefits?"

Answer:

The Department supports an exemption for Corps of Engineers' projects from acreage limitation provisions unless the conditions stated in Section 104 of S.1867 apply. We do not believe that Corps' projects constructed primarily for flood control purposes, as most Corps' projects are, should be subject to acreage limitation provisions of Reclamation law even though there may be some irrigation benefits which stem from the projects. We believe that Congress should determine if acreage limitation should apply to Corps' projects on a project by project basis when the projects are authorized.

Question:

"(b) Please list all Corps projects that provide a benefit to irrigators, including the name and location of the project and the authorizing legislation."

Answer:

Listed below are Corps of Engineers' projects in the 17 Western States which can provide irrigation benefits. We have listed those projects from which we currently market irrigation water and those from which we are not currently marketing irrigation water separately. This list is based in part on information supplied to us by the Corps of Engineers in 1978 and may not include all Corps' projects in the 17 Western States which provide irrigation benefits. Corps' projects in other States that provide irrigation benefits are not included.

Corps of Engineers project from which the Bureau of Reclamation currently markets irrigation water	PL . Auth
Harlan Lake, Nebraska	78-534
Trinidad, Colorado	89-298
Black Butte, California	78-534
Buchanan, California	87-874
Hidden, California	87-874
Isabella, California	78-534
New Hogan, California	78-534
New Melones, California	78-534 87-874
Pine Flat, California	78-534
Success, California	78-534
Terminus, California	78-534
Folsom, California	78-534
Conchas, New Mexico	75-241
Fall Creek, Oregon	81-516
Cottage Grove, Oregon	75-761
Dorena, Oregon	75-761
Blue River, Oregon	75-761
Fern Ridge, Oregon	75-761
Hills Creek, Oregon	81-516
Applegate, Oregon	87-874
Ririe, Idaho	87-874
Lost Creek, Oregon	87-874
Cougar, Oregon	83-780
Detroit, Oregon	75-761
Green Peter, Oregon	83-780
Foster, Oregon	75-761
Lucky Peak, Idaho	79-526

Corps of Engineers projects from which the Bureau of Reclamation is not currently marketing irrigation water	PL Auth.
Fort Peck, Montana	78-534
Lake Sakakawea, North Dakota	78-534
Big Bend, South Dakota	78-534
Fort Randall, South Dakota	78-534
Gavins Point, South Dakota	78-534
Wilson Lake, Kansas	78-534
Kanopolis Lake, Kansas	94-423
Las Estros, New Mexico	83-780
John Martin, Colorado	81-82
Canton Lake, Oklahoma	79-526
Waurika Lake, Oklahoma	88-253
Wynoochee lake, Washington	87-874
Lower Granite, Washington	79-14
Little Goose, Washington	79-14
Lower Monumental, Washington	79-14
Ice Harbor, Washington	79-14
McNary, Oregon	79-14
Belton, Texas	79-526
Tat Momolikot, Arizona	89-298
Almo, Arizona	78-534

Question:

"(c) Which of the Corps projects referred to in question 2(b) are currently subject to the reclamation laws?"

Answer:

We consider all the Corps of Engineers' projects which are utilized for irrigation purposes subject to Reclamation law based on Section 8 of the Flood Control Act of 1944 or other provisions of law; therefore, all the projects listed above are subject to Reclamation law. Reclamation law has been applied only to those projects from which we are marketing water.

It is our view that Reclamation law only applies in the 17 Western States; however, a Library of Congress analysis of Section 8 of the Flood Control Act of 1944, dated October 28, 1977, indicated that Corps' projects in all States that provide irrigation benefits are subject to Reclamation law. We have not contracted with waters users for irrigation water under Reclamation law outside the 17 Western States. Further, we have established the policy, in respect to private irrigation diversions from Corps reservoirs on the mainstem of the Columbia and Missouri Rivers, that Reclamation law will not apply when such diverter's water supply is not dependent, at any time, upon the existence and operation of Federal project facilities, and the diverters would have an assured water supply for irrigation with or without the Federal project. In administering this policy, it is necessary to determine if the private diverter holds a valid natural-flow water right under State law, whether the quantity of water under the water right would be available for diversion without the Federal project whenever needed for irrigation, and whether the diversion interferes with the operation of the Federal project. Under this policy we have not, as of this date, required contracts for private irrigation diversions from Corps' reservoirs on the mainstem of the Columbia and Missouri Rivers; however, Reclamation law does apply to those projects based on Section 8 of the Flood Control Act of 1944.

Question:

"(d) Assuming that some of the Corps projects referred to in question 2(b) are currently subject to the reclamation laws and some are not, what is the basis for the distinction?"

Answer:

As indicated in our response to questions 2(c) we consider all irrigation water deliveries from the Corps' projects listed in 2(b) to be subject to Reclamation law except as noted in our response to question 2(c). Under Section 8 of the Flood Control Act of 1944, only projects that provide irrigation benefits are subject to Reclamation law. There are a number of other Corps, projects situated in the 17 Western States which, we understand, do not provide irrigation benefits.

Question:

"(e) Please list all Corps projects that would be exempted from the reclamation laws by the provisions of S.1867."

Answer:

While the purpose of Section 104 of S.1867 is to exempt Corps' projects from Reclamation law unless certain conditions apply, we believe that Section 104(c) may be interpreted to continue the application of acreage limitation and Federal Reclamation law to Corps' projects. Section 8 of the Flood Control Act of 1944 and other specific statutes are the basis for applying Reclamation law to Corps' projects. Section 104(c) appears to reaffirm those provisions of law.

Of the Corps projects listed in our response to question 2(b), Sections 104(a) and 104(b) of S.1867 would continue the application of acreage limitation and Reclamation law to irrigation water deliveries from the following:

Harlan Lake
Black Butte
New Hogan
Folsom
Buchanan
Hidden
Wilson Lake
Kanopolis Lake

Question:

"3. In your December 10 testimony you specifically stated that the Corps projects on the Kings, Kern, Kaweah, and Tule Rivers should be exempt from the reclamation laws.

(a) Why does the Department support these exemptions?"

Answer:

The Department supports the exemption of the Corps' projects on the Kings, Kern, Kaweah, and Tule Rivers in California for the same reason it supports the general exemption for Corps' projects that are primarily flood control projects. In addition, the water user districts served from these projects hold the water rights for all of the flow in these rivers which were utilized for irrigation of the lands now served long before the Federal projects came into existence. We believe it would be very difficult, costly, and inappropriate to attempt to impose the acreage limitation provisions of Reclamation law on well established farm economies that were not subject to those restrictions when they were developing. Further in the Kings River service area, 22 of the 28 water user organizations have completed payment of their irrigation obligation. In the Kern River service area, the districts served have completed payment of their obligations to the United States which covers the entire amount of the irrigation allocation. These districts would be exempt under Section 106(a) of S.1867. The obligation of the water user districts in the Kings River service area which have not completed payment of their construction charges is less than 20 percent of the total project costs allocated to irrigation of $14,250,000. Another consideration is the periodic flooding of lands that occurs in the Kings and Kern River areas that makes farming in smaller units very difficult. The land subject to flooding can be farmed profitably if it is incorporated into a large farming operation in which some land always would be available for farming.

Question:

"(b) In your view, does Section 104 of S.1867 exempt these projects?"

Answer:

We believe there is a serious question whether Section 104 exempts these four projects because of the effect of Section 104(c) as we pointed out in our response to question 2(e).

Question:

"4. Section 103(a) of S.1867 essentially provides that irrigation water from projects constructed after the date of enactment shall not be delivered for use on excess lands until the owner has executed a recordable contract requiring disposal of the excess lands within a reasonable time. Such reasonable time is to be established by the Secretary, but shall not exceed ten years after the initial delivery of water.

(a) Are there any reasons why a farmer who receives water from a new project should be given to 10-years after initial water delivery to dispose of his excess lands?"

Answer:

The 10-year disposition period provided in recordable contracts has been in general use since the late 1940's. It was established by the Secretary of the Interior as a reasonable period of time that the excess land owners should be allowed to dispose of their excess land. Among the factors taken into consideration in establishing the 10-year disposition period are the following: incentive needed to induce the excess land owner to sell their excess land to eligible owners, allowing sufficient time to the owners for the orderly sale of the land and, in the cases of projects with a large acreage of excess land, allowing a sufficient time period for the sale of those lands to avoid the problem of a large amount of excess land on the market at a given time that could have the effect of depressing the value of the land. There have been various procedures used which modify the disposition period for recordable contracts including beginning the 10-year disposition period when water becomes available to the district rather than when the recordable contract is signed; staged disposition procedure requiring a certain percentage of the land under recordable contract to be sold at specified years during the 10-year disposition period allowed and reducing the disposition period to 5-years. We believe the recordable contract disposition period should be long enough to induce the excess landowners to agree to dispose of their excess land soon after water is available.

Question:

"5. Under Section 103(b), which applies to existing projects, it appears that the Secretary's discretion is not limited regarding the length of time within which disposal is required by the recordable contract.

(a) Does the Department feel that there should be a cap under this subsection?

(b) If so, what limit does the Department suggest?"

Answer:

We believe their should be a limit on the disposition period allowed under Section 103(b) which should be the same as the period allowed under Section 103(a) or not to exceed 10 years.

Question:

"6. If Section 106(g) became law, in what types of situations would the Department find it applicable? Approximately how much total acreage would be made exempt under this provision?"

Answer:

6. Section 106(g) is apparently intended to apply to situations such as will exist in the Central Arizona Project where project water made available for agricultural purposes may later be withdrawn for municipal and industrial use. This provision may also be construed to apply to other contracts we have in effect such as those in the Central Valley Project, California, and others that permit the transfer of water from agriculture to municipal and industrial use. These agricultural water deliveries are not considered temporary; therefore, this section as written may not be applicable in any situations.

If you desire additional information, please advise us.

Sincerely yours,

Robert Broadbent

Commissioner
Robert N. Broadbent

APPENDIX II

Additional Material Submitted for the Record

AN ECONOMIC ANALYSIS OF 160 ACRE LIMITATIONS ON IRRIGATED FARMS IN MONTANA

By LeRoy D. Luft and Joseph F. Guenthner

Staff Paper 76-23

This study results from a joint effort between the Department of Agricultural Economics and Economics, Agricultural Experiment Station, and the Cooperative Extension Service, Montana State University, Bozeman, Montana. The study was supported in part by the Bureau of Reclamation, U.S. Department of Interior, Billings, Montana.

Greater detail on enterprise cost data will be reported in the following Cooperative Extension Service Bulletins: Bulletin 1161, Enterprise Costs of Irrigated Crops in the Helena Valley; Bulletin 1163, Enterprise Costs of Irrigated Crops on the East Bench in Beaverhead County; Bulletin 1162, Enterprise Costs of Irrigated Crops in the Lower Yellowstone Valley, all authored by LeRoy D. Luft, Jerry Schaefer and Joseph F. Guenthner; Bulletin 1151, Enterprise Costs of Irrigated Crops in South Central Montana; Bulletin 1143, Enterprise Costs for 160 Acre Irrigated Cropfarm in Blaine County; and Bulletin 1146, Enterprise Costs for 450 Acre Irrigated Cropfarm in Blaine County, all by Jerry Schaefer and LeRoy D. Luft.

This report will also be published as Agricultural Experiment Station Research Report 103.

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AN ECONOMIC ANALYSIS OF 160 ACRE LIMITATIONS ON IRRIGATED FARMS IN MONTANA

LeRoy D. Luft and Joseph F. Guenthner*

Summary

Panels of farmers who operated irrigated farms were brought together by county extension agents in order to collect the data for the studies. A computer budget generator program was used to calculate costs and returns for the average size irrigated farm and a smaller or 160 acre irrigated farm in five areas of Montana.

Costs and returns were tabulated for each of the farms to determine the return to labor, management, and real estate. Adjustments were made to these figures accounting for loan repayments under three different levels of debt load. This information was used to analyze the economic feasibility of irrigated farms subject to acreage limitations imposed by law and administered by the Bureau of Reclamation.

The 160 acre farms in the Helena Valley and Milk River Valley and the 320 acre farm in the East Bench Unit all return less than $9,000 to labor, management, and real estate. These farms are thus unable to support a family even with no real estate debt load. The 160 acre farm in the Lower Yellowstone Valley and Huntley Project, however, might be able to support a small family if there were no real estate debt payments to make or interest charged on land investment. The average size farms in each area are much more financially sound and able to support a family than the smaller farms.

Based on the results of this study, it is recommended that the Reclamation Law be modified to allow irrigated farms on federal irrigation projects to be of sufficient size so that they are economically sound, self-sustaining units.

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*Extension Economist, Cooperative Extension Service and Research Associate, Department of Agricultural Economics and Economics, Montana State University, Bozeman, Montana 59715.

As evidenced by this study, sufficient size varies from area to area. A simple blanket increase in the acreage limitation, then, would not be desirable. If any acreage restriction at all must be imposed, it should be determined separately for each project, or category of projects, and be subject to periodic review. The problem is not a simple one. Enforcement of a simple policy expressed in terms of physical acres can only result in economic confusion for both individual farm families and the Montana economy which depends so heavily on agriculture.

Introduction

The first practical use of irrigation was probably more than 12,500 years ago.[1/] For many proponents there has been a certain romanticism attached to irrigation and much talk of making the desert "bloom as the rose." In fact, the reclamation and irrigation of agricultural lands has been, through the years, the foundation of many civilizations. Because of the land, climate, and limited water resources of the Western United States, reclamation has been an important component in the development of modern civilization in that region.[2/] This was generally not true for the humid Eastern United States, but in the West, one of the important agricultural problems was and still is the supply of irrigation water.[3/]

In the early years of the development of the West, most U.S. citizens were ignorant of both the agricultural potential and agricultural problems associated with that area. Some thought that it was largely a desert wasteland while others thought that the lush farmland of Iowa extended all the way to the Pacific Ocean. Few realized the importance of irrigation. The Mormon pioneers who entered the

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[1/] Huffman, Roy E., Irrigation Development and Public Water Policy, Ronald Press Co., New York, 1953, p. 7.

[2/] Golze', A. R., Reclamation in the United States, The Caxton Printers, Ltd., Caldwell, Idaho, 1961, p. ix.

[3/] Tinney, E. Roy, "Water for Western Federal Irrigation Projects," Water Resources Management and Public Policy, T. H. Campbell and R. O. Sylvester, Editors, Chapter 1, University of Washington Press, Seattle, 1968, p. 10.

Great Salt Lake Valley in the 1840's are considered by many to be the first successful modern irrigation farmers in the West. Other irrigation developments sprang up shortly thereafter in California and Colorado and spread rapidly to other states. This phenomenon created great national interest in irrigation, thereby leading to federal programs involving irrigation development.

Originally the public domain in the United States was sold in various sized tracts. Dissatisfaction with this land policy led to the Preemption Act of 1841 which gave settlers the rights to 160 acres of Western land at a price set by the government. This act established four important federal policies: (1) that the settlement of the public domain was more important than the revenue to be obtained from it; (2) that the land should not be opened to those who already had sufficient land; (3) that the public domain should be settled in small farms to permit the greatest possible development; and (4) that the settlers on the public domain should have a fair chance to gather sufficient sums to buy their lands.4/

Speculators were able to take advantage of both the law and the settlers. This was one of the reasons for the enactment of the Homestead Act of 1862 which was signed into law by President Lincoln. Title to 160 acres could be obtained by settlers who met certain requirements such as residing on the land for five years, which was later amended to 14 months. The Homestead Act apparently didn't give consideration to the arid lands of the West so the Desert Land Act was passed in 1877. The Act attempted to promote irrigation. It allocated 640 acres per settler in the 11 far western states in hopes that it would induce settlers to invest in expensive irrigation construction on their farms.

The Homestead Act was instrumental in settling the West and except for the

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4/Golze', op cit., p. 63.

Northern Great Plains, nearly all arable land had been claimed by 1890 and only the large arid blocks were left vacant.[5] Additional legislation was required to provide water for irrigation of these arid lands. Settlers were unable to finance large irrigation costs even with the larger acreage allotments. Pressure for government aid led to the Carey Act of 1894. This Act dictated that the government donate up to one million acres to each state if the land would be settled, irrigated, and at least partially cultivated in plots of a maximum acreage of 160 acres. Investment of private capital was to be encouraged by providing that a lien be made on the land for the cost of reclamation.[6] The Carey Act did not produce a satisfactory irrigation development program in the West and so the Reclamation Act was passed in 1902.

Many of the simpler irrigation projects had been completed without federal aid. However, pressure was exerted for federal financial support for two purposes: (1) to provide water storage so that irrigated lands would have an adequate water supply in the late summer months when natural water levels subside; and (2) to provide a full water supply for additional lands which could not be adequately furnished with water from the natural flow.[7] The Reclamation Act of 1902 represents the federal government's first formal involvement with public irrigation projects. The main objectives of federal water policy were: to develop the arid lands of the West, to achieve a wide distribution of benefits, and to create a proper social environment. The Reclamation Act was a natural extension of the government's activities in public land disposal.[8] Subsequently, however, many reclamation projects involved land that was already privately owned. This gave rise to many problems such as the excess lands problem.

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[5] Golze', Ibid, p. 64.

[6] Huffman, op. cit., p. 23.

[7] Golze', op. cit., p. 19.

[8] Brown, Gardner, "The Economics of Agricultural Water Use," Water Resources Management and Public Policy, T. H. Campbell and R. O. Sylvester, Editors, Chapter 3, University of Washington Press, Seattle, 1968, p. 36.

Congress had held extensive hearings on the Reclamation Bill in 1901 but the bill failed passage in that year. In the fall of 1901 Theodore Roosevelt became President. Mr. Roosevelt, who considered land reclamation among the most important problems of this administration,[9] supported the bill and after a bitter congressional battle, he signed the law on June 17, 1902. This Reclamation Act is the foundation of modern reclamation in the United States and the Bureau of Reclamation of the U. S. Department of Interior is the nation's most important public water agency in agricultural development.

Among the important original provisions of the Reclamation Act are:

1. Establishment of a reclamation fund from the sale and disposal of public lands to be used in developing irrigation projects.
2. Agreement by the settler to repay the cost of construction in annual payments, to meet the residence requirements of the Homestead Act, and to reclaim at least half of the total irrigable area of his entry.
3. The selling of water rights to private owners of land but not more than 160 acres to an individual, and in no case to non-residents of the state in which the project is located.[10]

The third provision, which limits the delivery of water to tracts of not more than 160 irrigable acres, is subject to strong differences of opinion. The limitation was adopted in the first place to: (1) curb land monopolies; (2) prevent land speculation; and (3) encourage settlers to make their own homes on their own lands.[11] Congressman Newlands of Nevada, the prime framer of the Act, testified in 1901 that "the whole policy of the government has been against land monopoly and has been intended to secure homes for actual settlers" and "the purpose there, as far as entry is concerned, is to permit the occupation of lands, and the purpose, so far as giving the right to use water is concerned, is to prevent the monopoly of lands."[12] Representative Mondell of Wyoming stated that, "under nearly every project undertaken by the government there will undoubtedly be some lands in private ownership; and it would be manifestly unjust and inequitable not to provide water for these lands, providing their owners are willing to comply with the conditions of the Act; and in order that no such lands may be held in large quantities . . . it is provided that no water right for more than 160 acres shall be sold to any landowner."[13]

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[9] Huffman, op. cit., p. 26.

[10] Huffman, op. cit., p. 25.

[11] Wallace, L. T., The 160 Acre Limitation Policy, Western Extension Public Affairs Committee Publication No. 1, 1907.

Supporters of the present limitation say that the philosophy of using federal funds for private subsidization has not changed and they see no reason to change either the philosophy or the Act. Opponents believe that the present limitation is obsolete due to the technical and economic environment of modern agriculture. Many of these people object to the existing size of the limitation rather than to the idea of an acreage limitation itself.[14]

There have been a number of laws designed to amend the acreage limitation. The Reclamation Extension Act of 1914 reduced the size of individual holdings to a "farm unit" to be determined for each project by the U.S. Department of Interior. This farm unit may be of any acreage determined sufficient up to a maximum of 160 acres. Other laws have been passed to increase or omit the 160 acre limitation on a few specific projects but the 1902 law still holds for most projects. Farmers holding lands in excess of 160 acres may still receive water by: (1) paying in advance all construction charges against excess land; or (2) signing a recordable contract with the Secretary of Interior for disposal of excess lands at dryland prices within 10 years.[15]

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[12] Golze', op. cit., p. 65.

[13] Golze', Ibid., p. 66.

[14] Wallace, op. cit., p. 2.

Bureau of Reclamation projects represent a significant portion of the agricultural resource base which exists in the state of Montana. There is a large variability concerning the soils, climate, crops and market potential for each project, but each is subject to some form of the 160 acre limitation. The same acreage limitation is applied to intensely farmed areas such as those found in California. In past years the Bureau of Reclamation has maintained a lenient policy regarding "excess lands" but recently pressure has been exerted to enforce it. The law apparently has sufficient strength to be enforced. In the U.S. Supreme Court case of Ivanhoe Irrigation District vs. McCracken (357 U.S. 275), a California Supreme Court decision was overruled concerning the 160 acre limitation. McCracken was a bachelor irrigating in excess of 160 acres (had he been married he and his wife could have irrigated 320 acres) and the Supreme Court decision denied him federal water to irrigate more than 160 acres. The court opinion was "in short the excess acreage provision acts as a ceiling, imposed equally upon all participants, on the federal subsidy that is being bestowed."[16]

Because of the variation in productive capabilities from one area to another, the acreage ceiling has significantly different economic consequences. Largely because of this, there have been recent efforts to modify the acreage limitation. The efforts seem to concentrate on establishing an adequate farm size unit under varying conditions of irrigation without abandoning the longstanding family farm policy. Dr. Huffman includes the following as a component of sound irrigation policy in the U.S.

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[15] Golze', op. cit., p. 347.

[16] Trelease, Frank S., Cases and Materials on Water Law, West Publishing Co., St. Paul, Minnesota, 1967, p. 339.

> The family farm should remain as a basic objective in the expenditure of public funds for irrigation development but it should be a concept consistent with modern agriculture. The combination of resources which can be managed efficiently by the farm family has changed through the years. If an obsolete standard for the family farm is maintained in connection with public irrigation development it may result in the creation of a segment of agriculture which is at a competitive disadvantage not only with highly commercialized agriculture but the other family farms as well.[17]

Dr. Huffman's proposal, which was published in 1953, is still sound today. A 160 acre farm may well be feasible in some of the federal irrigation projects in the U.S. However, that same size farm, in terms of acres, may not be able to support a family in other projects. For example, an irrigated unit of 160 acres in California has a much higher productive capacity than a 160 acre unit in Montana.

This is an old problem. Because of recent legislative and court action, the existing arrangements which permitted a de facto policy whereby definition of size based on productive capacity rather than physical size is being called into question. This research was undertaken in order to provide information which can be used in the evaluation of a de jure policy which will be a liveable policy for irrigated farmers in Montana. The specific purpose of this study is to evaluate, on the basis of economic criterion, the 160 acre limitation policy as it applies to projects in the state of Montana.

Procedure

In order to accomplish the objective, enterprise cost-return studies were made in five widely-separated locations in Montana. These locations are: East Bench-Dillon; Helena Valley; Huntley Project; Lower Yellowstone-Glendive,

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[17] Huffman, op. cit., p. 305.

Sidney; and Milk River-Chinook. The costs and returns were estimated for a 160 acre irrigated crop farm and also on farms of the average or typical size in the same area. The costs of production were calculated using the Oklahoma State University Crop Budget Generator which was designed for the purpose of developing enterprise cost budgets.[18/]

Data for the budgets were collected at meetings with a panel of farmers who operated irrigated farms. The meetings were set up by the respective county extension agents. The agents, as well as other interested parties such as agricultural lenders, also attended these meetings.

An attempt was made to have farmers who operated different size farms at the meetings: a group of typical, successful farmers to supply the average size farm data and a group of farmers whose acreage would be close to the 160 irrigated acres. In one of the locations, Huntley Project, an individual visit was made to each of four smaller farmers to collect the data for the 160 acre farm.

In some instances there were few or no farmers in the area who farmed approximately 160 acres. In these cases the typical farmers were asked to assume that they could only farm 160 acres and asked for their best judgments as to what their practices would be in such a situation. The costs calculated in these instances may be on the conservative side. The farmers felt that with an acreage limitation of 160 acres some of the machinery would be purchased as used machinery. In reality, the farmers would probably have to purchase a substantial amount of new machinery since the supply of used

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[18/] Information about the program is contained in: Kletke, Darrel D., Operations Manual for the Oklahoma State University Enterprise Budget Generator, Research Report P-719, Agricultural Experiment Station, Oklahoma State University, June 1975; and Walker, Rodney L. and Kletke, Darrel D., Users Manual Oklahoma State University Crop Budget Generator, Progress Report P-656, Agricultural Experiment Station, Oklahoma State University, November 1971, revised October 1972.

machinery may be quite limited.

The people at the East Bench meeting could not imagine anyone in the area even attempting to farm only 160 acres. However, there was one part-time farmer at the meeting who farmed close to 320 acres. Therefore, the remainder of the farmers were asked to consider a 320 acre farm and information was collected on this basis. The 160 acre limitation has been interpreted to mean that a husband and wife could each own 160 acres and together farm 320 acres. This aspect is discussed in a later section.

The budgets contain only crop enterprises and no livestock enterprises. The alfalfa hay and irrigated pasture produced on some of the farms were assumed to be sold at the current market price. Since the market for cattle has been depressed in recent years, a lower farm income may have resulted had cattle been included in the analysis.

Results

Enterprise cost studies were prepared for the average size irrigated crop farm and a 160 acre (320 acres in one case) irrigated crop farm in five areas of Montana. The summaries of the crop budgets from the enterprise cost studies appear in Tables 1 through 10. The tables show costs by category of machinery variable costs, materials and services, miscellaneous overhead, interest on operating expenses, machinery fixed costs and building depreciation, real estate taxes, insurance and water taxes. The residual after these costs are taken out is the return to management, labor and real estate (land and buildings). With a labor and management cost charged to the enterprise, the remaining figure shows the return to real estate. It must be noted that the opportunity cost of the capital invested in land is treated as a residual and not a cost. An economic analysis would normally treat this

Table 1

Summary of Crop Budget Data From An Enterprise Cost Study For An 800 Acre Farm on the East Bench Unit (Dillon), Montana, and Returns to the Various Factors of Production

	540 Acres Alfalfa		210 Acres Barley		50 Acres Spring Wheat	
	- - - - - - - Costs Are In Dollars Per Acre - - - - -					
Gross returns		140.00[1/]		178.50[2/]		225.00[3/]
Machinery variable costs[4/]	24.95		23.11		23.11	
Materials and service	54.80		53.82		55.32	
Miscellaneous overhead	6.00		6.30		6.38	
Interest on operating capital	1.14		1.84		1.93	
Total variable cost		86.89		85.07		86.74
Return over variable cost		53.11		93.43		138.26
Machinery fixed costs and building dep.	13.88		22.80		22.80	
Water tax, real estate taxes, and insurance	8.41		8.41		8.41	
Fixed costs		22.29		31.21		31.21
Return to management, labor and real estate		30.82		62.22		107.05
Labor and management cost		31.09		33.86		38.51
Return to real estate		- .27		28.36		68.54

[1/] 3.5 T/A x $40.00/T.

[2/] 70 bu/A x $2.55/bu.

[3/] 60 bu/A x $3.75/bu.

[4/] Includes $10/acre for sprinkler irrigation equipment costs.

Source: Guenthner, Joseph F., Jerry Schaefer and LeRoy D. Luft, Enterprise Costs of Irrigated Crops on the East Bench Unit, Extension Bulletin 1163, Montana State University, Bozeman, Montana.

Table 2

Summary of Crop Budget Data From An Enterprise Cost Study For A 320 Acre Farm on the East Bench Unit (Dillon) Montana, and Returns to the Various Factors of Production

	220 Acres Alfalfa		80 Acres Barley		20 Acres Spring Wheat	
	- - - - - - - Costs Are In Dollars Per Acre - - - - - -					
Gross returns		140.00[1]		178.50[2]		225.00[3]
Machinery variable costs[4]	24.25		22.78		22.78	
Materials and service	54.80		53.82		55.32	
Miscellaneous overhead	6.72		7.37		7.45	
Interest on operating capital	1.14		1.80		1.90	
Total variable cost		86.91		85.77		87.45
Return over variable cost		53.09		92.73		137.55
Machinery fixed costs and building dep.	28.80		44.48		44.48	
Water tax, real estate taxes, and insurance	9.20		9.20		9.20	
Fixed costs		38.00		53.68		53.68
Return to management, labor and real estate		15.09		39.05		83.87
Labor and management cost		30.37		33.14		37.79
Return to real estate		-15.28		5.91		46.08

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[1] 3.5 T/A x $40.00/T.

[2] 70 bu/A x $2.55/bu.

[3] 60 bu/A x $3.75/bu.

[4] Includes $10/acre for sprinkler irrigation equipment costs.

Source: Schaefer, Jerry, LeRoy D. Luft and Joseph F. Guenthner, Enterprise Costs of 160 Acre Irrigated Farms, Staff Paper 76-22, Department of Agricultural Economics and Economics, Montana State University, Bozeman, Montana.

Table 3

Summary of Crop Budget Data From An Enterprise Cost Study For A 600 Acre Farm in the Helena Valley, Montana, and Returns to the Various Factors of Production

	300 Acres Alfalfa		150 Acres Irrigated Pasture		75 Acres Malting Barley		40 Acres Oats		35 Acres Spring Wheat	
	- - - - - - - - - - - - - - - Costs Are In Dollars Per Acre - - - - - - - - - - - - - -									
Gross return		136.00[1]		32.00[2]		125.00[3]		117.00[4]		122.50[5]
Machinery and variable costs	21.92		6.29		20.41		20.41		20.41	
Materials and service	27.82		16.25		33.95		30.75		30.75	
Miscellaneous overhead	5.37		2.42		6.42		6.25		6.25	
Interest on operating capital	1.15		.84		1.81		1.72		1.72	
Total variable cost		56.26		25.80		65.59		59.13		59.13
Return over variable cost		79.74		6.20		62.41		57.87		63.37
Machinery fixed costs and building dep.	25.56		3.71		39.80		39.80		39.80	
Water tax, real estate taxes, and insurance	9.73		9.73		9.73		9.73		9.73	
Fixed costs		35.29		13.44		49.53		49.53		49.53
Return to management, labor, and real estate		44.45		-7.24		12.88		8.34		13.84
Labor and management cost		34.90		14.80		35.24		34.44		34.90
Return to real estate		9.55		-22.04		-22.36		-26.10		-21.06

[1] 3.4 T/A x $40.00/T.

[2] 4 AUM's/A x $8.00/AUM.

[3] 50 bu/A x $2.50/bu.

[4] 65 bu/A x $1.80/bu.

[5] 35 bu/A x $3.50/bu.

Source: Guenthner, Joseph F., Jerry Schaefer and LeRoy D. Luft, Enterprise Costs of Irrigated Crops in the Helena Valley, Extension Bulletin 1161, Montana State University, Bozeman, Montana.

Table 4

Summary of Crop Budget Data From An Enterprise Cost Study for a 160 Acre Farm in the Helena Valley, Montana, and Returns to the Various Factors of Production

	80 Acres Alfalfa		40 Acres Irrigated Pasture		20 Acres Malting Barley		20 Acres Oats	
	- - - - - - - - - - - - - Costs Are In Dollars Per Acre - - - - - - - - - - - - -							
Gross return		136.00[1]		32.00[2]		125.00[3]		117.00[4]
Machinery variable costs	23.28		8.12		14.15		14.15	
Materials and service	27.62		16.25		49.95		45.15	
Miscellaneous overhead	6.97		2.71		6.66		6.41	
Interest on operating capital	1.16		.83		1.72		1.62	
Total variable cost		59.03		27.91		72.48		67.33
Return over variable cost		76.97		4.09		52.52		49.67
Machinery fixed costs and building dep.	52.37		6.91		41.04		41.04	
Water tax, real estate taxes, and insurance	11.10		11.10		11.10		11.10	
Fixed costs		63.47		18.01		52.14		52.14
Return to management, labor and real estate		13.32		-13.92		.38		- 2.47
Labor and management cost		37.57		14.17		27.79		-26.99
Return to real estate		-24.25		-28.09		-27.41		-29.46

[1] 3.4 T/A x $40.00/T.

[2] 4 AUM's/A x $8.00/AUM.

[3] 50 bu/A x $2.50/bu.

[4] 65 bu/A x $1.80/bu.

Source: Schaefer, Jerry, LeRoy D. Luft and Joseph F. Guenthner, Enterprise Costs of 160 Acre Irrigated Farms, Staff Paper 76-22, Department of Agricultural Economics and Economics, Montana State University, Bozeman, Montana.

Table 5

Summary of Crop Budget Data From An Enterprise Cost Study for a 300 Acre Farm in the Huntley Project Area, Montana, and Returns to the Various Factors of Production

	100 Acres Sugar Beets		100 Acres Corn Silage		60 Acres Spring Wheat		40 Acres Alfalfa	
	Costs Are In Dollars Per Acre							
Gross return		612.00[1]		292.00[2]		243.75[3]		250.00[4]
Machinery variable costs	50.72		30.17		21.45		19.79	
Materials and services	82.33		53.59		29.75		22.85	
Miscellaneous overhead	15.44		8.72		6.93		5.50	
Interest on operating capital	3.41		3.49		1.77		.95	
Total variable cost		151.90		95.97		59.90		49.09
Return over variable cost		460.10		196.03		183.85		200.91
Machinery fixed costs and building dep.	123.10		57.78		46.29		44.14	
Water tax, real estate taxes, and insurance	14.28		14.28		14.28		14.28	
Fixed costs		137.38		72.06		60.57		58.42
Return to management, labor and real estate		322.72		123.97		123.28		142.49
Labor and management cost		102.72		54.59		40.95		43.62
Return to real estate		220.00		69.38		82.33		98.87

[1] 18 T/A x $34.00/T.

[2] 20 T/A x $14.00/T.

[3] 65 bu/A x $3.75/bu.

[4] 5 T/A x $50.00/T.

Source: Schaefer, Jerry and LeRoy D. Luft, Enterprise Costs of Irrigated Crops in South Central Montana, Extension Bulletin 1151, Montana State University, Bozeman, Montana.

Table 6

Summary of Crop Budget Data From An Enterprise Cost Study for a 160 Acre Farm in the Huntley Project, Montana, and Returns to the Various Factors of Production

	40 Acres Alfalfa		20 Acres Feed Barley		60 Acres Sugar Beets		20 Acres Irrigated Pasture		20 Acres Spring Wheat	
	- - - - - - - -	- - - - - - - -	- - - - - - - -	- - - - Costs Are In Dollars Per Acre - - - -						
Gross return		250.00[1]		160.00[2]		612.00[3]		48.00[4]		243.75[5]
Machinery variable costs	20.59		19.23		46.26		5.02		19.23	
Materials and service	22.85		29.77		107.33		53.41		29.75	
Miscellaneous overhead	5.81		6.05		15.65		4.11		6.46	
Interest on operating capital	.96		1.72		4.25		2.29		1.72	
Total variable cost		50.21		56.77		173.49		64.83		57.16
Return over variable cost		199.79		103.23		438.51		-16.83		186.59
Machinery fixed costs and building dep.	56.73		70.79		155.23		8.71		70.79	
Water tax, real estate tax, and insurance	14.45		14.45		14.45		14.45		14.45	
Fixed costs		71.18		85.24		169.68		23.16		85.24
Return to management, labor and real estate		128.61		17.99		268.83		-39.99		101.35
Labor and management cost		43.62		32.86		99.39		16.17		41.24
Return to real estate		84.99		-14.87		169.44		-56.16		60.11

[1] 5 T/A x $50.00/T.

[2] 80 bu/A x $2.00/bu.

[3] 18 T/A x $34.00/T.

[4] 6 AUM's/A x $8.00/AUM.

[5] 65 bu/A x $3.75/bu.

Source: Schaefer, Jerry, LeRoy D. Luft and Joseph F. Guenthner, Enterprise Costs of 160 Acre Irrigated Farms, Staff Paper 76-22, Department of Agricultural Economics and Economics, Montana State University, Bozeman, Montana.

Table 7

Summary of Crop Budget Data From An Enterprise Cost Study for a 300 Acre Farm in the Lower Yellowstone Valley, Montana, and Returns to the Various Factors of Production

	100 Acres Sugar Beets	40 Acres Beans	50 Acres Alfalfa	40 Acres Corn Silage	50 Acres Spring Wheat	20 Acres Barley
	- - - - - - - -	- - - - - - - -	- - - Costs Are In	Dollars Per Acre - - -	- - - - - - - -	- - - - - - - -
Gross return	612.00[1/]	208.00[2/]	160.00[3/]	292.00[4/]	175.00[5/]	114.00[6/]
Machinery variable costs	50.98	33.05	10.97	39.56	26.33	26.33
Materials and service	120.03	42.49	58.19	50.08	25.90	10.00
Miscellaneous overhead	17.04	9.83	6.80	12.21	7.11	6.29
Interest on operating capital	5.04	3.65	1.08	2.88	1.44	.95
Total variable cost	193.09	89.02	77.04	108.73	60.78	43.57
Return over variable cost	416.54	118.98	82.96	183.27	114.22	70.54
Machinery fixed costs and building dep.	95.81	71.57	35.96	100.25	46.74	46.74
Water tax, real estate taxes, and insurance	15.35	15.35	15.35	15.35	15.35	15.35
Fixed costs	111.16	86.92	51.31	115.60	62.09	62.09
Return to management, labor and real estate	305.38	32.06	31.65	67.67	52.13	8.34
Labor and management cost	109.14	49.75	28.55	63.42	42.12	36.02
Return to real estate	196.24	-17.69	3.10	4.25	9.99	-27.68

[1/] 18 T/A x $34.00/T.

[2/] 16 T/A x $13.00/T.

[3/] 4 T/A x $40.00/T.

[4/] 20 T/A x $14.60/T.

[5/] 50 bu/A x $3.50/bu.

[6/] 60 bu/A x $1.90/bu.

Source: Schaefer, Jerry, Joseph F. Guenthner and LeRoy D. Luft, Enterprise Costs of Irrigated Crops in the Lower Yellowstone Valley, Extension Bulletin 1162, Montana State University, Bozeman, Montana.

Table 8

Summary of Crop Budget Data From An Enterprise Cost Study for a 160 Acre Farm in the Lower Yellowstone Valley, Montana, and Returns to the Various Factors of Production

	50 Acres Sugar Beets		50 Acres Beans		25 Acres Alfalfa		35 Acres Spring Wheat	
	- - - - - - - - - - - Costs Are In Dollars Per Acre - - - - - - - - - - -							
Gross return		612.00[1/]		208.00[2/]		160.00[3/]		175.00[4/]
Machinery variable costs	42.64		25.61		12.15		18.70	
Materials and service	120.44		42.49		70.37		29.90	
Miscellaneous overhead	18.21		9.99		6.80		6.69	
Interest on operating capital	5.08		3.64		.97		1.41	
Total variable cost		186.37		81.73		90.29		56.70
Return over variable cost		431.63		126.27		69.71		118.30
Machinery fixed costs and building dep.	137.40		82.29		25.13		43.01	
Water tax, real estate taxes, and insurance	15.38		15.38		15.38		15.38	
Fixed costs		152.78		97.67		40.51		58.39
Return to management, labor and real estate		278.85		28.60		29.20		59.91
Labor and management cost		104.76		49.75		27.90		40.92
Return to real estate		174.09		-21.15		1.30		18.99

[1/] 18 T/A x $34.00/T.

[2/] 16 T/A x $13.00/T.

[3/] 4 T/A x $40.00/T.

[4/] 50 bu/A x $3.50/bu.

Source: Schaefer, Jerry, LeRoy D. Luft, Joseph F. Guenthner, Enterprise Costs of 160 Acre Irrigated Farms, Staff Paper 76-22, Department of Agricultural Economics and Economics, Montana State University, Bozeman, Montana.

Table 9

Summary of Crop Budget Data From An Enterprise Cost Study For a 450 Acre Farm in the Milk River Valley, Montana, and Returns to the Various Factors of Production

	Spring Wheat After Spring Wheat Based On 45 Acres		Spring Wheat After Alfalfa Based On 30 Acres		Barley After Barley Based On 45 Acres		Barley After Irrigated Pasture Based On 30 Acres		Alfalfa Hay Based On 150 Acres		Irrigated Pasture Based On 150 Acres	
	- - - - - - - - - - - - - - - - Costs Are In Dollars Per Acre - - - - - - - - - - - - - - - -											
Gross return		172.50[1]		172.50[1]		128.75[2]		128.75[2]		122.50[3]		32.00[4]
Machinery variable costs	17.96		19.39		17.96		19.60		10.46		1.51	
Materials and service	27.29		14.76		22.49		22.49		20.24		16.67	
Miscellaneous overhead	4.71		4.39		4.47		4.80		3.17		1.37	
Interest on operating capital	2.50		1.93		2.25		2.34		1.69		.98	
Total variable cost		52.46		40.47		47.17		49.23		35.56		20.53
Return over variable cost		120.04		132.03		81.58		79.52		86.94		11.47
Machinery fixed costs and building dep.	29.04		33.10		29.04		33.17		13.41		1.58	
Water tax, real estate taxes, and insurance	7.55		7.55		7.55		7.55		7.55		7.55	
Fixed costs		36.59		40.65		36.59		40.72		20.96		9.13
Return to management, labor and real estate		83.45		91.38		44.99		38.80		65.98		2.34
Labor and management cost		37.10		37.76		32.74		33.70		31.62		10.85
Return to real estate		46.35		53.62		12.25		5.10		34.36		-8.51

[1] 45 bu/A x $3.50/bu. + 3/4 T Straw at $20.00/T.

[2] 55 bu/A x $2.00/bu. + 3/4 T Straw at $25.00/T.

[3] 3.5 T/A x $35.00/T.

[4] 4 AUM's/A x $8.00/AUM.

Source: Schaefer Jerry and LeRoy D. Luft, Enterprise Costs of 450 Acre Irrigated Cropfarm in Blaine County, Bulletin 1146, Montana State University, Bozeman, Montana.

Table 10

Summary of Crop Budget Data From An Enterprise Cost Study for a 160 Acre Farm in the Milk River Valley, Montana, and Returns to the Various Factors of Production

	Spring Wheat After Spring Wheat Based On 20 Acres		Spring Wheat After Alfalfa Based on 20 Acres		Alfalfa Hay Based On 60 Acres		Irrigated Pasture Based On 60 Acres	
	- - - - - - - - - - - Costs Are In Dollars Per Acre - - - - - - - - - - - - - -							
Gross return		172.50[1]		172.50[1]		122.50[2]		32.00[3]
Machinery variable costs	18.64		22.15		15.39		2.05	
Materials and service	40.73		28.20		21.68		18.11	
Miscellaneous overhead	5.22		4.61		3.83		1.54	
Interest on operating capital	3.23		2.33		2.05		1.09	
Total variable cost		67.82		57.29		42.95		22.79
Return over variable cost		104.68		115.21		79.55		9.21
Machinery fixed costs and building dep.	26.98		30.33		20.13		3.06	
Water tax, real estate taxes, and insurance	8.38		8.38		8.38		8.38	
Fixed costs		35.36		38.71		28.51		11.44
Return to management, labor and real estate		69.32		76.50		51.04		-2.23
Labor and management cost		35.33		37.04		31.62		10.85
Return to real estate		33.99		39.46		19.42		-13.08

[1] 45 bu/A x $3.50/bu. + 3/4 T Straw at $20.00/T.

[2] 3.5 T/A x $35.00/T.

[3] 4 AUM's/A x $8.00/AUM.

Source: Schaefer, Jerry and LeRoy D. Luft, Enterprise Costs for 160 Acre Irrigated Cropfarm in Blaine County, Bulletin 1143, Montana State University, Bozeman, Montana.

as a cost, but because of the nature of this study it was treated as a residual return. This step-by-step procedure is used for all of the crops for both farm sizes in each of the five areas.

It should be noted that the returns are based on a specific yield and price. Any variation, even if slight, could alter the returns picture considerably. Also, due to inherent agricultural price and yield variations, what may be a low return crop one year may be a high return crop the next year. These budgets represent, on the average, how farmers in each area adjust to the dynamic agricultural conditions.

Cropping strategies used may not be optimal; however, they reflect farming practices used in each area. For example, irrigated pasture is grown in some cases even though it was not found, on the average, to be a profitable enterprise. However, many farmers point out that they have some land on their farms that is suitable only for pasture. In some of the areas, no high value row crops are grown. Determination of optimal crop strategies is an important activity since the production of certain crops may be limited by soil type, climate, length of growing season, and market access in each area.

Contrary to what one might expect, there doesn't appear to be economies of size in the production of all of the crops. When comparing the average size and small size farm for the same area, costs per acre are sometimes nearly the same. If the same machinery and buildings were used, this would, of course, not be the case. Apparently the average size operator felt that large machinery expenditures were not out of order. These operators could afford a large investment in machinery while it was assumed that the small operator would either own a cheaper, used machine that would just get the job done or he may hire a custom operator. The farmer panels tended to provide low cost estimates for the smaller farmer since experience indicated he would have a difficult time being financially successful.

The return to management, labor and real estate in Tables 1-10 is, in effect, the amount of money available for family living, payment of income taxes, capital investment and real estate debt retirement. This figure for each crop is multiplied by the number of acres of the particular crop to give the return for the farm (Tables 11 through 15). The returns are summed to give the return to management, labor and real estate for the whole farm. From this, the farmer must pay his income taxes, repay any real estate mortgages, including principle and interest, make new capital investments and provide a living for his family.

The returns for the entire farm are, of course, quite a bit less for the small farm. The returns also differ from one area to the next. For example, a 300 acre farm in the Huntley Project area returns four times as much as a 600 acre farm in the Helena Valley. This is because row crops are grown in the Huntley Project area but not in the Helena Valley. Row crops are also grown in the Lower Yellowstone Valley but not in the East Bench Unit or the Milk River Valley. This provides a partial explanation of the differences in returns.

Analysis

The return to management, labor and real estate varies over a wide range for each of the areas in the study. Of particular interest are the returns to the smaller or 160 acre farms in each area. The Helena Valley 160 acre farm returns a low of $467.00 to management, labor and real estate while the Huntley Project farm provides a high of $22,861.20. From this, total debt payments on the farm must be made. The residual is what is available for income tax payment, family living and additional investment.

Table 11

Dollars Available for Family Living, Income Tax, Real Estate Debt Retirement and Capital Investment on an 800 Acre and a 320 Acre Irrigated Farm in the East Bench Unit of Montana

800 Acre Farm

Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Alfalfa	540	$ 30.82	$ 16,642.80
Barley	210	62.22	13,066.20
Spring Wheat	50	107.05	5,352.50
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 35,061.50

320 Acre Farm

Crop	Number of Acres	Return to Management, Labor and Real Estate	Return to Farm by Crop
Alfalfa	220	$ 15.09	$ 3,319.80
Barley	80	39.05	3,124.00
Spring Wheat	20	83.87	1,677.40
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 8,121.20

Table 12

Dollars Available for Family Living, Income Tax, Real Estate Debt Retirement and Capital Investment on a 600 Acre and a 160 Acre Irrigated Farm in the Helena Valley of Montana

600 Acre Farm

Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Alfalfa	300	$ 44.45	$ 13,335.00
Irrigated Pasture	150	- 7.24	- 1,086.00
Barley	75	12.88	966.00
Oats	40	8.34	333.60
Spring Wheat	35	13.84	484.40
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 14,033.00

160 Acre Farm

Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Alfalfa	80	$ 13.32	$ 1,065.60
Irrigated Pasture	40	-13.92	- 556.80
Barley	20	.38	7.60
Oats	20	- 2.47	- 49.40
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 467.00

Table 13

Dollars Available for Family Living, Income Taxes, Real Estate Debt Retirement and Capital Investment on a 300 Acre and a 160 Acre Irrigated Farm in the Huntley Project Area of Montana

300 Acre Farm

Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Sugar Beets	100	$ 322.72	$ 32,272.00
Corn Silage	100	123.97	12,397.00
Spring Wheat	60	123.28	7,396.80
Alfalfa	40	142.49	5,699.60
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 57,765.40

160 Acre Farm

Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Alfalfa	40	$ 128.61	$ 5,144.40
Barley	20	17.99	359.80
Sugar Beets	60	268.83	16,129.80
Irrigated Pasture	20	- 39.99	- 799.80
Spring Wheat	20	101.35	2,027.00
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 22,861.20

Table 14

Dollars Available for Family Living, Income Tax, Real Estate Debt Retirement, and Capital Investment on a 300 Acre and a 160 Acre Irrigated Farm in the Lower Yellowstone Valley of Montana

300 Acre Farm

Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Sugar Beets	100	$ 305.38	$ 30,538.00
Beans	40	32.06	1,282.40
Alfalfa	50	31.65	1,582.50
Corn Silage	40	67.67	2,706.80
Spring Wheat	50	52.13	2,606.50
Barley	20	8.34	166.80
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 38,883.00

160 Acre Farm

Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Sugar Beets	50	$ 278.85	$ 13,942.50
Beans	50	28.60	1,430.00
Alfalfa	25	29.20	730.00
Spring Wheat	35	59.91	2,096.85
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 18,199.35

Table 15

Dollars Available for Family Living, Income Tax, Real Estate Debt Retirement, and Capital Investment on a 450 Acre and a 160 Acre Irrigated Farm in the Milk River Valley of Montana

450 Acre Farm

Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Spring Wheat After Spring Wheat	45	$ 83.45	$ 3,755.25
Spring Wheat After Alfalfa	30	91.38	2,741.40
Barley After Barley	45	44.99	2,024.55
Barley After Irrigated Pasture	30	38.80	1,164.00
Alfalfa Hay	150	65.98	9,897.00
Irrigated Pasture	150	2.34	351.00
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 19,933.20

160 Acre Farm

Crop	Number of Acres	Return to Management, Labor, and Real Estate	Return to Farm by Crop
Spring Wheat After Spring Wheat	20	$ 69.32	$ 1,386.40
Spring Wheat After Alfalfa	20	76.50	1,530.00
Alfalfa Hay	60	51.04	3,062.40
Irrigated Pasture	60	- 2.23	- 133.80
Dollars Available from Crops for Family Living, Income Taxes, Capital Investment and Real Estate Debt Retirement			$ 5,845.00

Speculations are made as to what dollar amount an adequate residual would be. However, the amount of money needed to provide a farm family with comfortable living is a very arbitrary figure. Family living expenditures depend on the number, age and the health of family members, location of the farm and many other things. In this study two figures are arbitrarily selected for family living requirement analysis. A residual of $12,000.00 and above is selected as sufficient for family living, income taxes and additional capital investment and a residual of $9,000.00 or less is selected as being too low. Amounts between $9,000.00 and $12,000.00 are classified as marginal.[19]

The return to management, labor and real estate with no debt payment is (Tables 11-15):

East Bench Unit--$8,121.20 for a 320 acre farm;

Helena Valley--$467.00 for a 160 acre farm;

Huntley Project--$22,861.20 for a 160 acre farm;

Lower Yellowstone Valley--$18,199.35 for a 160 acre farm;

Milk River Valley--$5,845.00 for a 160 acre farm.

According to the above criterion, Huntley Project and the Lower Yellowstone Valley would be the only two areas able to provide an adequate family income from 160 acre irrigated farms, providing there are no debt payments to make. It should be remembered, however, that no interest charge on land is made as an opportunity cost. An individual owning such land could sell the land, invest the capital elsewhere, and earn some rate of return. This foregone return was not included in this study. Return to real estate is shown as a residual return.

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[19] These figures are lower than the average realized net income per farm of $18,231 in 1973 and $17,150 in 1974 as reported by the Montana Crop and Livestock Reporting Service, Helena, Montana.

Tables 16 through 20 depict what would be available for family living, income tax and additional investment after loan repayments are made at three different real estate debt loads. Loans were calculated at nine percent interest. In the Lower Yellowstone Valley and Huntley Project studies a 25-year loan was used. In the remaining three areas a longer 30-year loan was used because farmers in these areas apparently cannot make as large a yearly payment. The analysis is also presented for the average size farm in each area. For three of the areas, East Bench, Helena Valley and Milk River Valley, it is obvious that the small farms cannot be successfully operated under any of the debt loads. For the Lower Yellowstone, the 160 acre farm could not handle much more than a 25 percent debt load. In the Huntley Project, however, the success of the 160 acre farm does not become questionable until a debt load of nearly 50 percent is reached.

It would have been useful to have an average debt load of irrigated farms in each of the areas but that information could not be obtained. The farmers themselves are reluctant to talk about such matters and agricultural lenders don't like to give out such confidential information. However, one agricultural lender at Billings estimated that at least half of the irrigated farmers in the Huntley Project area were carrying a 65 percent real estate debt load. Thus, only a small minority of the 160 acre farms in the area would be successful. Obviously, 160 acre farms in the other four areas would be much worse off under that kind of debt load.

Apparently farmers in only two areas, Huntley Project and Lower Yellowstone Valley, would even have a chance of surviving on 160 acres. This slim chance, however, probably depends on the continued viability of the sugar beet industry in the areas, a situation which an individual farmer can do little to influence. Economic viability of 160 acre irrigated farms under the most favorable conditions in Montana probably depends on the continual operation

Table 16

Summary of Returns for a 320 Acre and an 800 Acre Irrigated Farm on the East Bench Unit, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes, and Additional Investment

Returns, Mortgage Payments and Dollars Available	320 Acre Irrigated Farm	800 Acre Irrigated Farm
Return to Labor, Management and Real Estate	$8,121.20	$35,061.50
Mortgage Payment on 25% Debt*	4,816.35	12,118.71
Available for Family Living, Income Taxes and Additional Investment	$3,304.85	$22,942.79
Return to Labor, Management and Real Estate	$8,121.20	$35,061.50
Mortgage Payment on 50% Debt*	9,632.70	24,237.43
Available for Family Living, Income Taxes and Additional Investment	-$1,511.50	$10,824.07
Return to Labor, Management and Real Estate	$8,121.20	$35,061.50
Mortgage Payment on 65% Debt*	12,522.51	31,508.66
Available for Family Living, Income Taxes and Additional Investment	-$4,401.31	$ 3,552.84

*Amortized loan for 30 years at 9 percent (amortization factor = .0973).
Value of land and buildings for the 800 acre farm = $498,200.
Value of land and buildings for the 320 acre farm = $198,000.

Table 17

Summary of Returns for a 160 Acre and a 600 Acre Irrigated Farm in the Helena Valley, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes, and Additional Investment

Returns, Mortgage Payments and Dollars Available	160 Acre Irrigated Farm	800 Acre Irrigated Farm
Return to Labor, Management and Real Estate	$ 467.00	$14,033.00
Mortgage Payment on 25% Debt*	2,685.48	9,671.62
Available for Family Living, Income Taxes and Additional Investment	-$2,218.48	$ 4,361.38
Return to Labor, Management and Real Estate	$ 467.00	$14,033.00
Mortgage Payment on 50% Debt*	5,370.96	19,343.24
Available for Family Living, Income Taxes and Additional Investment	-$4,903.96	-$ 5,310.24
Return to Labor, Management and Real Estate	$ 467.00	$14,033.00
Mortgage Payment on 65% Debt*	6,577.48	25,146.21
Available for Family Living, Income Taxes and Additional Investment	-$6,110.48	-$11,113.21

*Amortized loan for 30 years at 9 percent (amortization factor = .0973).
Value of land and buildings for the 600 acre farm = $397,600.00.
Value of land and buildings for the 160 acre farm = $110,400.00.

Table 18

Summary of Returns for a 160 Acre and a 300 Acre Irrigated Farm in the Huntley Project Area, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes and Additional Investment

Returns, Mortgage Payments and Dollars Available	160 Acre Irrigated Farm	300 Acre Irrigated Farm
Return to Labor, Management and Real Estate	$22,861.20	$57,765.40
Mortgage Payment on 25% Debt*	6,146.17	11,812.87
Available for Family Living, Income Taxes and Additional Investment	$16,715.03	$45,952.53
Return to Labor, Management and Real Estate	$22,861.20	$57,765.40
Mortgage Payment on 50% Debt*	12,292.35	23,625.74
Available for Family Living, Income Taxes and Additional Investment	$10,568.85	$34,139.66
Return to Labor, Management and Real Estate	$22,861.20	$57,765.40
Mortgage Payment on 65% Debt*	15,980.06	30,713.47
Available for Family Living, Income Taxes and Additional Investment	$ 6,881.14	$27,051.93

*Amortized loan for 25 years at 9 percent (amortization factor = .1018).
Value of land and buildings for the 300 acre farm = $464,160.
Value of land and buildings for the 160 acre farm = $241,500.

Table 19

Summary of Returns for a 160 Acre and a 300 Acre Irrigated Farm in the Lower Yellowstone Valley, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes and Additional Investment

Returns, Mortgage Payments and Dollars Available	160 Acre Irrigated Farm	300 Acre Irrigated Farm
Return to Labor, Management and Real Estate	$18,199.35	$38,883.00
Mortgage Payment on 25% Debt*	4,950.01	9,524.66
Available for Family Living, Income Taxes and Additional Investment	$13,249.34	$29,358.34
Return to Labor, Management and Real Estate	$18,199.35	$38,883.00
Mortgage Payment on 50% Debt*	9,900.05	19,049.32
Available for Family Living, Income Taxes and Additional Investment	$ 8,299.30	$19,833.68
Return to Labor, Management and Real Estate	$18,199.35	$38,883.00
Mortgage Payment on 65% Debt*	12,870.06	24,764.12
Available for Family Living, Income Taxes and Additional Investment	$ 5,329.29	$14,118.88

*Amortized loan for 25 years at 9 percent (amortization factor = .1018).
Value of land and buildings for the 300 acre farm = $374,250.00.
Value of land and buildings for the 160 acre farm = $194,500.00.

Table 20

Summary of Returns for a 160 Acre and a 450 Acre Irrigated Farm in the Milk River Valley, Mortgage Payments at Three Levels of Debt and Dollars Available for Family Living, Income Taxes and Additional Investment

Returns, Mortgage Payments and Dollars Available	160 Acre Irrigated Farm	450 Acre Irrigated Farm
Return to Labor, Management and Real Estate	$5,845.00	$19,933.20
Mortgage Payment on 25% Debt*	1,727.08	4,857.39
Available for Family Living, Income Taxes and Additional Investment	$4,117.92	$15,075.81
Return to Labor, Management and Real Estate	$5,845.00	$19,933.20
Mortgage Payment on 50% Debt*	3,454.15	9,714.80
Available for Family Living, Income Taxes and Additional Investment	$2,390.85	$10,218.40
Return to Labor, Management and Real Estate	$5,845.00	$19,933.20
Mortgage Payment on 65% Debt*	4,490.40	12,629.24
Available for Family Living, Income Taxes and Additional Investment	$1,354.60	$ 7,303.96

*Amortized loan for 30 years at 9 percent (amortization factor = .0973).
Value of land and buildings for the 450 acre farm = $199,687.50.
Value of land and buildings for the 160 acre farm = $71,000.00.

of sugar beet factories.

The current interpretation of the Reclamation Law is that a husband and wife may each own 160 acres and thus farm a total of 320 acres. A question then arises concerning the economic feasibility of 320 acre farms in each area. In the East Bench Unit the cost-return study was based on 320 acres and proved not to be feasible. In the Helena Valley, 320 acres would also not be sufficient since the average size farm of 600 acres is only successful with no debt load. Similarly, a 320 acre farm would not make it in the Milk River Valley. In the Lower Yellowstone Valley and the Huntley Project area, 320 acres would be sufficient since the average successful farm was determined to consist of 300 acres.

The means by which 320 acres may be farmed (under separate husband and wife ownership) is not based on sound economic reasoning, however. The probability of finding two 160 acre units that could be acquired within a reasonable distance of each other is remote. However, that is what a young, recently married farmer or a settler on a new project would have to attempt to do. Two distant units could not be operated nearly as efficiently as adjoining units or a completely integrated unit of adequate size.

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AMENDMENT TO

S.1867

Amend SEC.2.(b) to read as follows:

(b) The term "irrigation water" means the quantity of water ~~made~~ originating from ~~available-fore-agricultural-pur-purposes-from~~ the operation of reclamation project facilities and made available to irrigable land for agricultural purposes pursuant to a contract with the Secretary.

AMENDMENT TO

S.1867

Amend SEC.102. to read as follows:

SEC.102. ~~Wherever--an-acreage-limitation-is-imposed-by the-Federal-reclamation-law,-including-this-Act,-the-Secretary-upon-the-request-of-a-contracting-entity-shall-designate by-rule-lands-under-the-applicable-acreage-limitation-within-a district-classified-as-having-class-I-productive-potential-or-the equivalent-thereof-in-other-lands-of-lesser-productive-potential,--Standards-and-criteria-for-determination-of-land-classes pursuant-to-this-authority-shall-take-into-account-all-factors which-significantly-affect-the-economic-feasibility-of-irrigated agriculture,-including-but-not-limited-to-soil-characteristics, crop-adaptability,-costs-of-crop-production,-and-lenght-of growing-season,~~ Upon the request of any district, the acreage limitations imposed by the Federal reclamation laws, including this Act, shall apply to irrigable lands classified within a district by the Secretary as having class I productive potential or the equivalent thereof in larger acreage of less productive potential, within each project as determined by the Secretary, taking into account all factors which significantly affect productivity, including but not limited to topography, soil characteristics, adequacy of water supply, reliability of water supply, water quality, crop adaptability and costs of corp production. The Secretary is directed to complete such land classifications for each district upon the request of that district, and the term of recordable contract covering lands within the district shall be extended by the length of time elapsing between the date of the district's request and the date of completion of such classification as to that acreage which reasonably qualifies for the application of this section.

AMENDMENT TO

S.1867

Amend SEC.103.(a) to read as follows:

RECORDABLE CONTRACTS

SEC.103.(a) Irrigation water ~~made-available-in-the-operation-of-reclamation-project-facilities-constructed-after-the enactment-of-this-Act~~ may not be delivered for use in the irrigation of lands held in excess of the acreage limitations imposed by the Federal reclamation law, including this Act,within a district unless and until the owners thereof shall have executed a recordable contract with the Secretary requiring the disposal of their interest in such excess lands within a district, within ~~a-reasonable time;--Such-reasonable-time-shall-be-established-by-the-Secretary;-but-shall-not-exceed~~ ten years after the initial delivery of such water to those lands under terms and conditions otherwise required by reclamation laws generally. Any land owner subject to the recordable contract with a term of less than ten years as the result of conditions imposed prior to the effective date of this Act, may have the term extended for a total period of ten years from the date of the execution of such contract upon written request to the Secretary.

AMENDMENT TO

S.1867

Amend SEC.103.(e) to read as follows:

(e) Excess land ~~which-shall-have-been~~ disposed of ~~to~~ into ~~comply-with-the-therms-of-recordable-contracts-executed pursuant-to-this-Act~~ non-excess status receive irrigation water after disposal only--

(1) if they are held by nonexcess owners under this title, or qualified recipients under title II; and

(2) if ~~their~~ title to such lands, disposed of after the effective date of this Act, is burdened by a covenant prohibiting their sale, for a periof od ten years after their original disposal to comply with the Federal reclamation law or title II of this Act, for values exceeding the sum of the value of newly added improvements and the value of the land as increased by market appreciation unrelated to the delivery of irrigation water. Upon execution of the terms of such covenant, the title to such lands shall be freed of the burden of any limitation on subsequent sale values which might otherwise be imposed by the operation of section 432a of title 43, United States Code. Any landowner subject to such limitation on sales value, as the result of conditions imposed prior to the effective date of this Act, may be relieved therefrom by filing with the Secretary an election to be brought under the provisions of this section. The Secretary shall thereupon issue a certificate to that effect appropriate for recording.

AMENDMENT TO

S.1867

Amend SEC.106.(a) to read as follows:

(a) after the obligation of a district for the repayment of the constructions costs of the project facilities used to make water available for delivery to such lands shall have been discharged, including those paid out prior to the effective date of this Act, whether by payment of a single lump sum, by payment of periodic installments through- a specified contract term or by such payments made on an accelerated schedule chosen by the obiligor: Provided, ~~That-where any-contract-has-been-or-may-be-entered-into-pursuant-to-the authority-of-the-Rehabilitation-and-Betterment-Act-(Act-of October-7,-1949,-63-Stat.-724,-as-amended),-the-contracting entity-shall-have-the-additional-option-of-adopting-a-form of-repayment-consistent-with-section-5(c)(2)-of-the-Small Reclamation-Projects-Act-of-1956-(Act-of-August-6,-1957,-70-Stat.-1044,-as-amended)-and-if-such-form-of-repayment-is adopted,-the-acreage-limitation-provisions-of-the-Federal reclamation-law-shall-not-apply-solely-as-a-result-of-the indebtedness-under-such-contract.--Provided-further,~~ That the appropriate contracting entity or owner or owners of land with respect to which the contractual repayment obligation shall have been discharged may request, and the Secretary shall provide a recordable certificate acknowledging that the acreage limitation provisions of the Federal reclamation law no longer apply to such lands;

AMENDMENT TO
S.1867

Amend SEC.106.(g) to read as follows:

(g) served with ~~a~~ an interruptable or replacement ~~temporary~~ supply of irrigation water under contract conditions premitting the withdrawal of such water from such lands for later use for municipal and industrial purposes;

AMENDMENT TO
S.1867

Amend SEC.106 to include subparagraph (h) to read as follows:

(h) served with irrigation water for which water not originating or made available from the operation of reclamation project facilities has been exchanged or substituted, or served with irrigation water as a substitute supply for water otherwise available to such land which is now being put to use through project facilities.

AMENDMENT TO
S.1867

Amend SEC.108.(a) to read as follows:

VALIDATION

SEC.108.(a) Any ~~provision of any~~ contract or provision thereof, between the Secretary and any party to a contract dealing with matters arising under the Federal reclamation laws generally may be validated at the request of any ~~non-Federal~~ district or contracting party to such contract made to the Secretary within three years after the enactment of this Act.

AMENDMENT TO
S.1867

Amend SEC.108.(b) to read as follows:

(b) Written representations relating to the acreage limitation provisions of, or water service pursuant, to Federal reclamation law which were in effect or made prior to the effective date of this Act by the Secretary of the Interior or his authorized agents on behalf of the United States, with or for the benefit of a contracting entity may be validated at the request of any ~~non-Federal~~ district or contracting party to whom such written representation was made provided such request is made within three years after the enactment of this Act.

AMENDMENT TO

S.1867.

Amend SEC.109. to read as follows:

CONSENT TO SUE

SEC.109. In addition to any other remedy available in law or equity, (including but not limited to, the Act of July 10, 1952, C. 651, 66 Stat 560; 43 U.S.C. §666) any party to a contract with the Secretary providing for water service or for the repayment of the construction costs of Federal reclamation project facilities used to produce irrigation water may bring an action in the United States district court for the district in which the project facilities are located~~, and only in such district,~~ for mandatory injunctive or other appropriate relief to adjudicate, confirm, validate, or decree the contractual right of any person or entity, including but not limited to any such contract and to reform such contract in accordance with the terms of any written representation concerning the application or interpretation of the Federal reclamation law including this Act, or contracts made by the Secretary or his representative to such party or his predecessor in interest. Exclusive jurisdiction for such suit is hereby vested in the United States district court. In the case of written representation, if the court finds, on the basis of the evidence submitted, that the party would not have entered into the contract or accepted the interpretation of the contract but for the written representations made by the Secretary or his representative, which were

Amedment to SEC.109. continued

Page Two -

relied on by those using such irrigation water, then the court shall order the Secretary to reform the contract to conform with the representations, and the contract, as reformed, shall be considered valid as of the date of the written representation.

AMENDMENT TO

S.1867

Amend SEC.110. to include subparagraph (f) to read as follows:

(f) The small Reclamation Projects Act of 1956 (70 Stat. 1044), an amended, is further amended to read as follows:

(1) Subsection (c) of Section 5, as amended, is further amended by deleting "one hundred and sixty acres" and inserting, in lieu thereof, "One thousand six hundred acres", and the Secretary is directed to, upon request by local organizations that are party to contracts for repayment of loans under the Act, executed prior to this amendment, revise such contracts consistent with this amendment.

AMENDMENT TO
S.1867

Amend SEC.201.(b) to read as follows:

(b) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law~~,~~ ~~which-benefits---twenty-five-such-individuals-or-less~~.

AMENDMENT TO
S.1867

Amend SEC.201.(c) to read as follows:

(c) The term "landholding" means total irrigable acreage of one or more tracts of land within the area of a single district or contracting party, owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary.

AMENDMENT TO

S.1867

Amend SEC.201.(d) to read as follows:

(d) The term "Full cost" means all construction costs of facilities in service which are properly allocable to irrigation, plus all operation and maintenance deficits funded less credit for payments, with interest on both accuring from the date of a new or amended contract pursuant to this title on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the new or amended contract, and shall be calculated on the basis of the computed average interest rate payable by the Treasury upon its marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance~~.~~ and are outstanding at the time such facilities described above were placed in service or the first day of the fiscal year in which the original contract for the district was executed, whichever is sooner: Provided, However, that in no case shall such interest rate be less than five per centum per annum.

AMENDMENT TO
S.1867

Amend SEC. 202 to read as follows:

AMENDMENTS OF CONTRACTS

SEC. 202.(a) Any provisions of any contract existing between the Secretary and any party pursuant to Federal reclamation laws as of the date of enactment of this Act may be amended to conform with the provisions of this title, and the Secretary shall so amend such contractual provisions at the request of the ~~non-Federal~~ district or contracting party to to such a contract without requiring that other contractual provisions of an existing contract be amended or deleted.

(b) In the absence of an amendment to a contract approved by a district, as provided in subparagraph (a) of this Section, a qualified recipient may elect to be brought under the provision of this title by executing an agreement in writing approved by the Secretary to comply with this title.

(c) The provisions of this title shall become applicable to any such onctract and to such party only upon amendment of the contract.

AMENDMENT TO
S.1867

Amend SEC.203.(d) as follows:

(d) delete this subparagraph in its entirity

AMENDMENT TO

S.1867

Amend SEC.301. to read as follows:

TITLE III-LEASING REQUIREMENTS

SEC.301. Notwithstanding any other provision of the Federal reclamation law including this Act,all lands, except those within a district explicitly exempt from acreage limitation by Federal Statute or not otherwise subject to acreage limitation, which receive irrigation water may be lease only if the lease instrument is-

(1) written; and

(2) for a term not to exceed ten years, including any options exercisable by the ~~lesser~~ lessee, provided, however, that with the prior approval of the Secretary, leases of lands for the production of perennial crops having an average life of more than ten years may be for periods of time equal to the average life of the perennial crop but in any event not to exceed twenty-five years.

In addition, the Secretary ~~shall-be-provided-with~~ may require a certificate signed by the lessee which includes a legal description of the leased land, in excess of 1600 acres, the term of the lease, and a certification that the rent paid reflects the resonable value of the irrigation water to the productivity of the land.

A JOINT STATEMENT BEFORE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
DECEMBER 10 and 11, 1981*
WASHINGTON, D. C.

The importance of these hearings is well understood in California, and I have been asked to express the appreciation of several other California associations and organizations for the obvious interest your committee has in resolving current and longstanding controversies in the interpretation of federal reclamation law, and also to urge early action in bringing about overdue reform of the archaic provisions of the law.

California, as much as any other state, has sought changes in reclamation law over the last three decades that would recognize the needs of modern agriculture. The support for these changes is not confined to those who provide irrigation water, but includes a broad spectrum of the California economy. I have been asked specifically to express in this statement the support of the Agricultural Council of California, the California Chamber of Commerce, the California Farm Bureau Federation, the Western Growers Association and the Association of California Water Agencies. All of these organizations participated in hearings held in 1977, and objected to the imposition of regulations which would have had the effect of seriously damaging our agricultural economy, the number one industry in California. These organizations join in supporting changes which would:

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*Statement concurred in by the Agricultural Council of California, the California Chamber of Commerce, the California Farm Bureau Federation, the Western Growers Association and the Association of California Water Agencies. Delivered by John P. Fraser, Executive Director/General Counsel of AWCA.

1. Repeal the Residency Requirement.
2. Make it clear that reclamation law does not apply to federal flood control projects constructed by the Army Corps of Engineers.
3. Remove restrictions on leasing, and that any restrictions should be applicable to ownership as a condition to receiving project water at less than full cost.
4. Permit the delivery of water to farms of any size with the proviso that lands in excess of the minimum established by Congress, furnished with water supplies, should be provided at a rate reflecting the full costs allocated to irrigation.

Action by Congress is necessary. We have found over the years that without a specific congressional enactment, even written promises by federal officials, concerning the inapplicability of reclamation law, can be overturned by the courts.

While some of the organizations in California will be submitting statements on specific sections of proposed legislation, let me assure you that there is a unity of belief by agriculture and business organizations in California that action is needed now to forestall further controversies over court mandates that require the Secretary of the Interior to adopt regulations based upon existing statutory and case law. There is great uncertainty in the financing and completion of water programs. This committee can assist by clarifying the rules under which federal water will be delivered.

NAM

National Association of Manufacturers

Statement of the National
Association of Manufacturers

before

The Committee on Energy & Natural
Resources

on

Reclamation Reform Legislation
S. 1867

1776 F Street, N.W. • Washington, D.C. 20006 • (202) 626-3700

This statement is offered on behalf of the National Association of Manufacturers. The NAM represents approximately 12,000 member firms, which account for 80 per cent of the nation's industrial output and 85 per cent of the nation's industrial jobs. Headquartered in Washington, D.C. and with regional offices across the country, the NAM promotes American economic growth and productivity by developing and advocating sound industrial practices as well as effective government policies.

The NAM is concerned about the issue of reclamation reform for a number of reasons. In addition to the fact that several of our members are engaged in agriculture, over 800 of our member companies manufacture food or textile products and therefore depend to a large extent on agricultural productivity.

More importantly, the agricultural sector is crucial to the U.S. economy as a whole. Land irrigated by reclamation water produces over 30 per cent of the nation's vegetables, over 20 per cent of the cotton and over 90 per cent of the canning tomatoes. The total value of crops produced on land irrigated by reclamation water was estimated to be $7.4 billion in 1980. This amazing productivity occurs on a land area which is only 1 per cent of our nation's cropland. Reclamation reform is a vital interest, not only to those directly engaged in agriculture, but to the business community and the entire nation which depends on an efficient and productive agricultural sector. Therefore the NAM has an active task force on water resources which strongly supports modernization of the Reclamation Act of 1902.

Also, the NAM advocates the general principle of economic deregulation. The acreage limitations and residency requirements of the present law are examples of excessive government regulations which stifle initiative, interfere with basic property rights and disrupt the ability to compete in the free market economy. The impact of such regulation, in a broad sense, is less gross income, higher production costs, less total product and higher consumer prices than would otherwise would be the case.

The acreage limitation feature of reclamation law, originally enacted in 1902, is completely out of date. It stipulates that Federal water can be delivered to no more than 160 acres -- interpreted as 320 acres for a husband and wife. Today, the law's original purposes are either invalid or no longer served by existing acreage limitations. The program should now serve the purpose of encouraging national agricultural development. And to meet this objective, the acreage limitations need to be modernized to reflect current economic realities.

At the turn of the century, 160 acres were considered to be all the land a farmer could use. Prior to the invention of the tractor, there were real physical limits on the amount of land which could be cultivated. At that time, the average farm size was about 140 acres. Since then, the average farm size has increased at least three-fold, and in many areas of the country -- particularly the West

-- the average is much larger. This is due to the continuing advances in agricultural technology which have drastically changed the scale of modern farming.

The NAM believes that there should be no limit on the total size of an operating farm unit. It is a fallacy to assume that there is an optimum farm size. Economies of scale exist in agriculture but the scale changes as technology advances. It is far better to let competition market forces determine farm size than for a law to impose a "magic number". The proposals currently before us provide the freedom to enlarge farm sizes to those who wish to do so, either by leasing additional lands under the first title or by paying the full cost for water to lands in excess of the limit under the second title.

It is widely believed that one of the law's purposes was to encourage family farms. The family farm is undeniably an important component of our agricultural sector. Recent Department of Agriculture statistics show that small farms, which declined in numbers during the 1950's and 1960's, will increase by 18 to 20 per cent by the end of the 1980's. Family farms are the norm of Reclamation projects, despite the fact that acreage limitations have never been strictly enforced and some large farming units exist. Family farms will continue to flourish, because for some crops small operations are economical and because small farms have certain advantages in terms of marketing crops. For example, in the Northeast small farms provide a convenient source of produce for local consumers. Therefore, the law does not need to protect family farms by prohibiting larger farms. Without strict acreage limitations, farm size will adapt to the differing economies of scale which exist for different crops and different locations. Both small and large scale farming should be allowed to play their proper role in our economy.

Strict acreage limitations can be counter productive to family farms. Many successful family farms grow and eventually incorporate for the same reasons that businesses in other fields incorporate. In fact, most "corporate" farms originated as family farms. A family engaged in agriculture should have the same opportunity to better its lot and expand its business as a family engaged in any other endeavor. Likewise, residency requirements can hamper many small, family farmers who must hold off-farm jobs to help support their families.

Another alleged justification for strict acreage limitations is the desire to distribute widely the benefits of Federal reclamation projects -- to prevent large, corporate farms from receiving unfair amounts of subsidized irrigation water. However, the magnitude of these subsidies is frequently exaggerated. In fact, the money spent by the Federal government to build reclamation projects is fully reimbursable. A subsidy results only because farmers repay the government without interest. Non-agricultural beneficiaries of reclamation projects -- municipal and industrial water users and those who receive electricity from reclamation projects -- pay part of this interest, thus further reducing the cost to the government.

To the extent that irrigation water users are subsidized as a result of the interest free repayment practices, this policy is in fact a wise public investment. A study by the University of Denver Research Institute demonstrates that during a single year, 1975, the reclamation program stimulated an additional $11 billion in business activity. This yearly return alone is more than the total investment in Federal reclamation projects up to that point in time.

Therefore the subsidy does not exclusively benefit farmers. It is the general public which benefits from the delivery of water to agricultural land. These benefits come in the form of lower prices and increased availability of products in the market place. Other indirect benefits include enhanced tax revenues and added employment.

The proposals currently pending provide an equitable compromise for distributing the benefits of subsidized water among land holders and farmers. Under Title I, a farmer can only expand his holdings beyond 160 acres by leasing the additional land. In such a situation, the owners of the leased land -- not the lessee farmer who farms a larger area -- benefit from the delivery of Federal irrigation water. They receive a higher rental value due to the availability of irrigation water on their land. Since each of the owners who provides land for leasing owns no more than 160 acres, the benefits of irrigated water will extend to many land holders. Under the expanded ownership option of Title II, farmers must pay full cost, including interest, for water to land owned in excess of the revised limitation. This prevents any one owner from receiving an inequitable share of subsidized water while preserving the right of individuals to own as much land as they wish.

Specifically, the NAM supports the enactment of legislation, such as H.R. 4265 and S. 1867, which embodies the following provisions:

1. Repeal of the alleged residency requirement.
2. An increase in the number of acres in a single ownership eligible to receive water from a reclamation project.
3. The application of acreage "equivalency" to land of lesser productivity, due to soil, climate and other factors.
4. An extension of the time for disposing of excess lands which have been delayed by court order or Secretarial action.
5. Corporations or other legal entities participating in reclamation programs should not be discriminated against.
6. Leased lands should not be considered in the application of the acreage limitations to the landholding of the lessee.
7. Contracts and other written representations by the Secretary of the Interior, on behalf of the United States, to non-federal parties, should be validated upon the written request of such non-federal parties.
8. Exemptions from reclamation law should be granted under the following circumstances:
   (a) After payout (accelerated or lump sum payment).
   (b) Upon payment of an interest component under an equitable formula such as the Engle formula provided in the Small Reclamation Projects Act.
   (c) Corps of Engineers projects, under conditions stated in the Committee Report on S. 14, 96th Congress.

9. A "full cost" formula should be adopted, applying to excess lands similar to that set forth in Section 201(d) of H.R. 4265 as introduced.

If such reform measures are not approved by Congress, the Interior Department will be forced to enforce strictly the outdated provisions of the Reclamation Act of 1902. This would force farmers to sell thousands of acres of land to comply with the limits and severe economic dislocation would result. The National Association of Manufacturers urges Congress to approve promptly H.R. 4265 and S. 1867.

REALTOR®

NATIONAL ASSOCIATION OF REALTORS
Julio S. Laguarta, President
Jack Carlson, Executive Vice President

Albert E. Abrahams, Senior Vice President, Government Affairs
Gil Thurm, Vice President & Legislative Counsel, Government Affairs

Government Affairs Division
777 14th Street, N.W., Washington, D.C. 20005
Telephone 202 383 1000

December 23, 1981

The Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
3102 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The NATIONAL ASSOCIATION OF REALTORS® is taking this opportunity to comment on S. 1867, a bill to amend federal reclamation law. The National Association's Board of Directors endorsed S. 1867, with recommended amendments, at our annual convention this past November.

We appreciate your consideration of the arguments we present and request that the enclosed statement be included in the hearing record of the Committee on Energy and Natural Resources.

If we can be of any assistance, please do not hesitate to contact me or Thomas C. Franks, our Director of Environmental and Energy Affairs, at 383-1087.

Sincerely,

Albert E. Abrahams

AEA:laa

Enclosure

cc: Members of the Committee
on Energy & Natural Resources
Jack Carlson
Gil Thurm
Tom Franks

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics

STATEMENT OF THE NATIONAL ASSOCIATION OF REALTORS®
ON S. 1867 and H.R. 4265

The NATIONAL ASSOCIATION OF REALTORS® appreciates this opportunity to comment on legislation to amend the federal reclamation law of 1902. We appreciate the committee's consideration of these comments and their inclusion in the hearing record.

The NATIONAL ASSOCIATION OF REALTORS® is the nation's largest trade association comprised of nearly 700,000 members engaged in every facet of real estate. The reclamation issue is of particular importance to members of the Farm and Land Institute, an organization comprised of real estate professionals who deal in agricultural lands. Their specific interests are shared by the entire Association which is seriously concerned with any government actions which affect the sale and transfer of real estate.

We acknowledge the significance of the 1902 reclamation law in settling the West and enhancing the agriculture productivity of the nation as a whole. The Bureau of Reclamation water projects have made productive acres of otherwise barren land and provided countless farming opportunities for individuals over the past 80 years. As western development and farming practices in general have progressed, the reclamation program has been expanded to now include municipal, commercial, and industrial uses as well as serving agriculture needs.

Because of this progress, federal reclamation law has grown out-dated and legislative steps must be taken to conform federal law with the exigencies of modern farming practices. Some necessary changes could be effected through promulgating administrative regulations. However, we feel the 1902 Act requires thorough review and amending through the legislative process. The need for legislation is particularly pressing at this time because of pending regulations which propose to drastically alter the spirit of the original Act. These proposed regulations and rules should be supplanted entirely by the enactment of legislation similar to S. 1867 and H.R. 4265.

Mr. Chairman, the NATIONAL ASSOCIATION OF REALTORS® strongly endorses this legislation with suggested amendments. After years of deliberation on this issue, this legislation has emerged as a credible, responsible, and fair resolution of the controversy that surrounds this issue. Specifically, the Association is concerned with the following elements of the federal reclamation law:

1) Disposition of excess lands
2) Acreage limitations on ownership
3) Leasing limitations
4) Residency requirements
5) Contract amendments
6) Leasing requirements

1) Disposition of Excess Lands

The NATIONAL ASSOCIATION OF REALTORS® is vitally concerned about the method employed to sell lands in excess of the ownership limitations imposed by federal reclamation law. REALTORS® feel the free market is the best means of transferring land. The pending reclamation regulations (43 CFR Part 426) propose a lottery system or other impartial means of disposal be implemented to sell excess lands. We feel an impartial means of disposal is appropriate only after expiration of the recordable contract as provided for in this legislation. Any subsequent regulations to implement this act should refrain from inhibiting the free market transfer of land.

To ensure against any such restriction on disposing of excess lands, we recommend the legislative language be strengthened to ensure the traditional willing seller/willing buyer means of selling land. We are pleased that this legislation includes language to ensure that current owners are able to recover the increased value of land from market appreciation. We feel Congress should ensure that this legislation will encourage investment through the unrestricted operation of the free market.

2) Acreage Limitations on Ownership

The 1902 Act places a 160-acre ownership limit on lands eligible to receive reclamation project water. Considering the sophisticated technology of modern farming and the intensity of the capital investment it requires, this acreage limitation is too small to allow for economically sound agricultural practices. We support the largest possible ownership allowance. The 960-acre limit provided for in the House bill and the 1,600-acre limit in the Senate bill appropriately addresses the need to expand acreage limits. Although we prefer the larger allowance, we feel a compromised acreage limitation is acceptable if linked with a liberal leasing policy.

3) Leasing Limitations

The 1902 Act does not address the leasing issue. Consequently, leasing arrangements have increased and presently play a major role in western agriculture. The pending regulations propose strict enforcement of leasing limitations which neither S. 1867 nor H.R. 4265 propose. These bills recognize that to limit leasing as well as ownership under an overall small acreage limitation effectively inhibits the natural growth and progression of a productive farm operation. We feel a restrictive limitation would only penalize farmers for being industrious and successful.

Leasing is particularly important to new farmers struggling to make the initial investment farming requires and to farmers who grow speculative crops such as lettuce, cantaloupes, and other produce crops. New farmers cannot be denied the opportunity to lease lands in order to generate enough capital to invest in expensive farm equipment. Family farmers who plant highly speculative crops can afford to do so only on small tracts of land. Restricting leasing options will limit farming opportunities and may well result in higher food costs for the consumer.

Leasing and ownership acreage limits should be applied on a district-wide basis. A west-wide application scheme would be extremely difficult to administer. Computing full cost payments, determining eligibility, as well as other aspects of the Act, would prove unmanageable if applied west-wide. The Seventeen reclamation states contain 425 irrigation districts. The Bureau of Reclamation cannot effectively oversee the ownership and leasing arrangements across all these districts, especially when private parties enter partial ownership and leasing agreements.

Since neither bill addresses leasing and ownership application, we recommend amending the legislation to specifically state that these limitations should be instituted on a district-wide basis.

4) Residency Requirements

Residency has not been required by federal reclamation law since 1926. The legislation being considered explicitly omits any residency requirement. The draft environmental impact statement on the proposed reclamation regulations estimates that 2,000 owners would be forced to comply with residency by July 1986. Under the proposed regulation, owners must live within a 50 mile radius of their landholding. This would pose substantial economic hardship on these individuals, who would either be forced to move or sell their land. Given the state of today's real estate market, a residency requirement would be an onerous economic burden. We feel it entirely appropriate that residency requirements will not be imposed by this legislation.

5) Contract Amendments

To facilitate the new provisions made in this legislation, both the House and Senate bills allow existing contracts to be amended by individual irrigation districts. Our Association forsees potential difficulties and delays resulting from this provision. Generally, irrigation districts are governed by boards comprised of small landowners. The few large landowners within the individual districts might encounter difficulties in amending their contracts. To avoid this potential problem, we recommend amending both S. 1867 and H.R. 4265 to allow the provisions of Title II to be self-enacting. This will prevent delays in complying with the new provisions made under the act.

6) Leasing Requirements

The Senate bill contains a title not included in the House bill. Ostensibly to prevent fraudulent leasing, S. 1867 mandates that all terms for leasing land be written and that the leasing terms not exceed ten years. However, ten years is not an adequate length of time for some crops which can require at least fifteen years of productivity to be profitable. In order to allow farmers to recoup their investment, we recommend allowing a longer lease time or withdrawing the mandated time limitation entirely. Further, the title should be amended to include language to protect the confidentiality of any lease.

Conclusion

The NATIONAL ASSOCIATION OF REALTORS® welcomes the introduction of

S. 1867 and H.R. 4265 and strongly endorses their intent. We urge consideration of the arguments we have made here and the expeditious consideration and enactment of this legislation. Timely enactment will remove the uncertainty and apprehension that surrounds the reclamation issue. We look forward to working with the Committee to ensure prompt consideration of the pending legislation.

1125 Fifteenth Street, N.W.
Washington, D.C. 20005

Mortgage Bankers Association of America

James F. Aylward, CMB
President
Mortgage Bankers
Association of America
202-861-6501

December 22, 1981

The Honorable James A. McClure
Chairman
Committee on Energy and
  Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Mortgage Bankers Association of America (MBA), the trade association of this Nation's mortgage banking industry, I respectfully submit our views on S 1867, "The Federal Reclamation law," and request that this statement be included in the hearing record.

MBA is deeply concerned about the adverse effects on long-term mortgage credit availability for agricultural real estate stemming from certain provisions of the 1902 Reclamation Law and proposed regulations promulgated by the Department of Interior. Our primary concerns center on the reliability of water sources in the 17 western states and the impact of certain regulations promulgated by the Department of Interior under the 1902 Reclamation Law, which could adversely affect real estate values and mortgageability in these areas.

MBA is the only nationwide organization devoted exclusively to mortgage and real estate finance. MBA's membership is comprised of mortgage originators, institutional lenders, and a variety of industry related firms. Members include: mortgage banking companies, life insurance companies, commercial banks, mutual savings banks, savings and loan associations, pension funds, title companies, private mortgage insurers, state housing agencies, investment bankers, and real estate investment trusts.

Mortgage banking firms, which make up the largest portion of the total membership, engage directly in originating and servicing real estate mortgage loans made for institutional lenders. These lenders acquire mortgage loans for their investment portfolios to support obligations they have made to millions of Americans through life insurance policies, savings accounts, pensions, and other fiduciary responsibilities. You may be interested to learn that MBA was founded in 1914 as the Farm Mortgage Bankers Association of America. Our members have financed hundreds of millions of dollars worth of agricultural property and continue to have an active interest in this type of investing.

As of January 1 of this year, long-term agricultural debt held by institutional lenders approached $65 billion. Institutional lenders, such as insurance companies and banks, in addition to the Federal Land Banks and the Farmers Home Administration, lend money for the acquisition, development, and improvement of agricultural lands, and, quite frequently, to replace short-term debt. Since long term agricultural loans are secured by real estate, it is essential that the value of the security be adequate and economically stable. With respect to irrigated land, its value and stability are necessarily dependent on a reliable source of water. Jeopardizing the source, or even creating an uncertainty as to its reliability, will have an adverse impact on value, which affects the borrowing capacity of those engaged in agriculture during a time when increasing capital requirements exist. The administration of the reclamation law, occasioned by differing and often contradictory opinions of Solicitors General and of the Department of Interior itself, has created much uncertainty.

It is essential that the reclamation law be designed to encourage economic agricultural units that will provide an adequate and stable security, thus making it possible for institutional lenders to continue to make available the billions of dollars necessary to accommodate the increasing capital needs of modern day agriculture. Today's high level of agricultural production in the United States, unparalleled throughout the world, can be directly attributed to the willingness of institutional lenders to invest large amounts of capital on a long-term basis.

MBA supports the general thrust of S 1867. Its amendments to the outdated 1902 law are essential to clarify conflicting legal interpretations, as well as to modernize the law. To preserve the agricultural community, as we know it today, new legislation must also reflect the permanent changes that have occurred since 1902. Therefore, when considering this legislation we encourage you to take into account the following points:

1. Acreage Limitations. MBA supports the provisions in Title II of S 1867, which expand ownership acreage limitations to 1600 acres, and allow for an additional 1600 acres of leased land in order to encourage economical agricultural practices. Obviously, the current limitation of 160 acres is inadequate and incompatible with modern agricultural practices. MBA also supports the equivalency provision in Section 102, which provides for adjustment of the acreage limitation for lands of lesser potential productivity.

2. Residency Requirements. MBA supports Section 101, which repeals the residency requirements. Given the nature of modern agriculture and the mobility of our society, the purpose of the residency requirement now seems outmoded.

3. Sales of Excess Lands. The provisions of any measure passed by Congress should not have the effect of creating a market that would be artificially depressed due to forced land sales. MBA is deeply concerned about the impact of a lottery system, authorized under Section 103(b) on land sale values. MBA supports the language contained in Section 103(c), which requires the Secretary of the Interior to recover the fair market value of any land and improvements that are sold under the lottery system. MBA believes, however, that the time period for water delivery to excess lands should be lengthier than the

one year specified in Section 103(b)(2), where a landowner is actively engaged in good faith negotiations to execute a contract.

4. Ownership in Multiple Districts. Any acreage limitation should only apply within a single district, because the districts have no cross-indexing system that would alert a lender to a borrower's landholdings in other districts.

   Although the intent of the 1902 law was to apply its limitations throughout Reclamation Districts collectively, this creates a problem for a lender who has a borrower that owns land in more than one reclamation district. For example, a lender could obtain assurance from one district that the acreage limitation has not been exceeded and, therefore, the value of the security was based on land entitled to district water. Subsequent to the loan closing, it might be discovered that the borrower owned land in another district and, therefore, the borrower's landholdings would exceed the acreage limitation. In such a situation, the land might be designated as excess land, and the value of the underlying security would then be impaired substantially. A possible remedy to this concern would be a central file or cross-index within the Bureau of Reclamation from which the land holdings of a borrower can be determined throughout Reclamation districts.

5. Mortgageability of Land Within a Reclamation District. MBA supports Section 106(e), which allows for water delivery to lands for up to ten years, where the lands are acquired by involuntary process of law, such as foreclosure, by conveyance in satisfaction of a mortgage, by inheritance, or by devise. This is another concern to lenders. It is important that any new legislation remove existing obstacles, but at the same time not create any new ones that would render property less mortgageable or impair the value of mortgaged property. As an example, upon foreclosure lenders should be able to have sufficient water delivered for a period long enough to permit an orderly disposition of the property. Further, to protect the lender, a provision should restrict the ability of a borrower to transfer the non-excess status on pledged lands to other lands inside a district or to another district that are not pledged as security.

6. U.S. Corps of Engineers Projects Exemption. MBA supports Section 104. Heretofore, it has not been contemplated that U.S. Corps of Engineers projects should be subject to reclamation law.

7. Removal of Limitations Upon Payout. Because acreage limitations and other regulations place restrictions on private property rights, we see no reason for their continuance after a district has repaid their obligation, with interest.

The Mortgage Bankers Association of America appreciates the fact that the reclamation law is extraordinarily complex. However, many of the goals of the 1902 law have become outdated, and in order to preserve the preeminence of American agriculture, the flow of capital for agricultural investment must not be interrupted. While few will deny the need for modernized legislation, such legislation must be clear, concise, and definitive and not render agricultural land in reclamation districts unmortgageable.

We appreciate the opportunity to present our views to you and we would be happy to furnish additional information if needed. Should you have any questions, please contact Burton C. Wood, Senior Staff Vice President and Legislative Counsel, at 861-6507.

Sincerely,

James F. Aylward

James P. Aylward
President

JFA:dlt

Statement of the National Cotton Council of America
to the Water and Power Subcommittee
of the Senate Committee on Energy & Natural Resources
on Amendments to the Reclamation Act of 1902

December 11, 1981

The National Cotton Council represents cotton producers, ginners, warehousemen, merchants, cooperatives, textile manufacturers, and cottonseed crushers from the Carolinas to California.

Bills to amend the 1902 Reclamation Act are before this Committee because former Interior Secretary Andrus -- under a new interpretation of the Act -- proposed in 1977 to limit the size of farms that may receive irrigation water from federal reclamation projects.

In spelling out his interpretation, Secretary Andrus said that "broader social considerations" may override economic efficiency in determining the optimum size of U.S. farms.

This statement concentrates on the damages that would occur if commercial farms are severely handicapped or broken up under the guise of achieving so-called social goals.

There is no goal more worthwhile -- or more important to the people of the world -- than that of providing adequate food and fiber. American agriculture has done an incredible job of producing food and fiber at a rate unequalled by any other country. We export more farm products than any other nation in the world. American farmers today produce over 76 percent more crop output than their fathers did on the same number of acres.

But if we take a step backward by reducing and limiting farm size, our production of food and fiber will decline and its cost will be higher.

And when that occurs, how many more millions of people around the world will be unable to afford a good diet and how many more are going to starve? This is a vital question for agricultural policymakers.

Another vital question is the effect that limits on farm size would have on inflation. Unquestionably, one of the most effective ways to curb inflation is to hold down costs by increasing production efficiency. This helps keep consumer prices in check, and makes us more competitive in export markets.

A recent Council study (attached) compared the relative efficiency of small and large cotton farms in three representative areas of the Cotton Belt. In the Mississippi Delta, the total production costs for cotton and soybeans on the smallest farm were 12% and 22% higher, respectively, than on the largest farm.

On the smallest farm in the Texas High Plains, the costs of growing cotton and grain sorghum were 23% and 26¢ higher.

And in Arizona, which is fairly typical of irrigated cotton lands in the West, the smallest farm's cotton and wheat production costs were 17% higher.

Commercial farmers simply have more flexibility and more options in combining resources which minimize cost. This, in turn, means lower consumer costs for food and fiber.

Farm Census data also indicate that cotton yield increases with farm size. In three states, yields on larger farmers averaged, respectively, 47%, 52%, and 61% more than on smaller operations. And in all 14 major cotton-producing states, in the last three census years, the largest farms had yields 18% higher on an unweighted average basis.

The vague "benefits" cited by advocates of a restricted "small farm" agriculture cannot possibly outweigh the very sizeable yield and cost advantages we have cited for larger commercial farms. This is not just a question of benefits for farmers; it is also one of supply and cost of food and fiber to consumers.

Undoubtedly there will be proposals before this committee to limit the amount of land a farmer can operate. There was never a serious effort to do this before former Secretary Andrus proposed it -- not even in the many debates over the years on farm program payment limits. Those who sought to limit the subsidy finally prevailed, but it is far different to limit farm size.

Each farmer should be free to use his talents and resources to the extent HE, not the government determines to be feasible. To deprive him of this freedom would seriously hamper U.S. farm production and establish a dangerous precedent.

If the Congress feels benefits must be limited, there are alternative approaches. For example, the water cost subsidy could be eliminated for large operators, continued for the small, and perhaps phased down for the intermediate-sized. Larger farms could be charged the full cost of the water, including construction costs and interest, and present water prices could be continued for small farms. This would mainly benefit small operators who, because of their lower production efficiency, probably cannot survive without it. And while it unfairly discriminates against the larger farmers, their greater efficiency should enable them to pay the higher water cost and still produce competitively in most cases.

We also are concerned about the court decision applying reclamation law to Corps of Engineers flood control projects. We feel Congress did not intend to cover these projects, and we respectfully request that the legislation reported by your Committee exempt such projects. Obviously, irrigation is not the purpose of flood control projects, but simply a side benefit.

We believe the whole issue of limiting farm size raises some philosophical questions of grave importance for all citizens of the United States. Are we going to say that the American dream has been repealed? That our children no longer have unlimited opportunity? That a person can no longer go as far as his talents will take him? That if he chooses to farm, it will have to be on "X" number of acres and no more?

Freedom to use our talents to the fullest made us the greatest nation on the face of the earth. We should think long and hard before we limit that freedom.

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ECONOMIES OF SIZE
IN
COTTON FARMING

by
Dr. Kendell Keith
Agricultural Economist
National Cotton Council of America
January, 1980

With the current debate over the structure of U. S. agriculture and future of the "family farm," there is considerable interest in the size-efficiency relationship for modern commercial farms. Most agricultural economists seem to agree that significant size economies do exist, at least up to some point. The study presented here attempts to demonstrate the fairly substantial size economies that are possible for various regions of the cotton belt.

METHODOLOGY

In this study three major and diverse cotton growing areas are analyzed: Mississippi Delta, Texas High Plains and Arizona. The technique employed is a modified version of whole-farm budgeting. Based on available information from the USDA's Firm Enterprise Data System (11), state extension budgets (1,4,6,7,8,13) and International Harvester's Pro-Ag Linear Programming Model (2) budgets were constructed for hypothetical farms of various sizes in each region. To add realism while maintaining some degree of simplicity, example farms were assumed to grow cotton and one additional field crop: Mississippi Delta — cotton and soybeans, Texas High Plains -- dryland cotton and sorghum, and Arizona — irrigated cotton and wheat. The cropping mix for each area was selected on the basis of the relative importance of each crop.

Many factors can affect the overall efficiency of cotton farming. Resource management can be very complex, and to produce at the lowest possible cost requires substantial knowledge of all biological factors which can affect yields and the management capabilities to employ the most efficient mix of production inputs. Although it is probably true that managers of larger operations tend to have greater success in achieving consistently high yields, the size economies being measured in this analysis are related not to yield but solely to technical size economies resulting from the ability of larger farming operations to combine and more fully utilize a set of production inputs.

Several previous studies have attempted to measure technical economies of size in cotton prouduction (3,5,12). The basic analytical approach in each study was the same, using an economic engineering approach to construct budgets for synthetic firms under an assumed set of conditions. In the absence of accurate farm record data, this approach seems to be the only feasible alternative, but there are some obvious shortcomings. The researcher can never be certain that the analysis, as constructed, accurately depicts the size economies which are realized in a true farm setting. No two farming operations are confronted with the same set of circumstances, and farming practices and management capabilities tend to vary widely among farmers. Hence, the results of any study using synthetic data must be judged in large measure by the realism of assumptions. In recognition of this point, the concepts, assumptions and procedures underlying this analysis are summarized below.

The theoretical basis is the traditional neoclassical theory of the firm. In the short run, some resources are committed to production and fixed to the firm while others are totally variable and may be used in any increment desired. Average production cost per unit can be reduced by expanding output and more fully utilizing the set of fixed resources, but the principal of diminishing returns ensures that continued expansion in the short-run leads to increasing costs at some point. The result, of course, is the familiar U-shaped short-run average cost curve.

Over a longer time frame, all resources tend to be variable, and further reductions in average cost may be realized by expanding resources deemed fixed in the short run. Depending on circumstances, several farming inputs may be fixed for a given duration, but machinery is probably the resource most likely to restrict short-run expansion. Land can limit growth, but from year to year the better-than-average farmer usually has the option of renting additional parcels of land. Labor availability has become a problem for all commercial farmers, but if the manager is willing to offer adequate compensation, the labor resource can usually be expanded from one cropping season to the next. On the other hand, machinery represents a rather large investment, and once a given size is selected, it cannot be easily altered. To change to higher capacity implements usually requires an additional shift to larger tractors and increased harvesting capacity. Given the normally long useful life of machinery, it is realistic to assume the machinery size is relatively fixed over a period of several years. Therefore, the primary basis for size economy measurement in this study is the machinery complement.

Machinery

Three sizes of machinery are considered in this analysis, 4-, 6- and 8-row equipment. Each farm is assumed to have two tractors of approximately equal size, so that in event of mechanical failure at least one would be available to pull heavy tillage equipment. Additionally, two tractors allow different operations to be completed simultaneously. Field operations most common for each region were determined by reviewing USDA's "FEDS" budget series (11). The combination of implements necessary to complete field operations for each size of farm was then selected. The capacity and field efficiency of machinery was also computed from engineering coefficients contained in the USDA FEDS budgets. Depending on assumed labor supply (discussed below) and machinery size and efficiency, various farm sizes were matched with machinery complements so that adequate time would be available in critical periods of the crop year such as planting and harvesting.

Similar to other implements, harvesting machine capacity was computed from engineering coefficients contained in USDA budgets. Harvesting equipment is an expensive input item for the cotton producer, and the amount of available harvest time is a critical variable in determining practical limits for annual utilization. Total annual acreage capacity of harvesting machinery in each region was determined by discussions with farmers and state extension personnel and estimated good harvesting days contained in International Harvesters' Pro-Ag Linear Programming Model (2). Custom harvesting was assumed to be available in any quantity desired, and was substituted for ownership of harvesting equipment whenever it represented the least-cost alternative.

To calculate machinery cost, USDA-estimated 1977 prices for tractors and implements were used. There may be some disagreement as to whether new machinery prices or even pre-1977 prices should be used, based on average length of ownership, but the size economy measurements would not be altered appreciably by a change from this assumption.

Annual depreciation was assumed to be a fixed cost to the farming operation. The formula used to calculate depreciation for each item is the one used in USDA and most extension budgets given below.

$$\text{Annual Depreciation} = \frac{\text{Purchase Price} - \text{Salvage Value}}{\text{years}}$$

Where: Salvage Value = $XLP \times RFV1 \times RVF2^{(years)}$
Where: XLP is the list price of equipment
RFV1 is the first year correction factor in the declining balance depreciation schedule
RFV2 is a component of the standard declining balaance equation, and
years is the length of time equipment is owned.

In preparing individual enterprise budgets, depreciation is generally calculated on an hourly basis by assuming some level of annual usage. Of course, in whole farm budgeting, the level of annual usage for any given size is a known quantity, such that depreciation can more realistically remain a fixed annual cost.

Useful life was assumed to be fixed for all non-self-propelled equipment at 10 years. With good care, the life of some implements can be extended, but changing farming practices and technology may make some implements obsolete before they wear out.

A significant part of size economies are embodied in the annual utilization rate of self-propelled equipment. As hours of operation increase, machinery depreciation cost declines. This effect is offset to a degree by allowing the period of ownership for tractors, combines, cotton pickers and pickups to vary within practical limits, depending on estimated hours of annual use and estimated normal useful life. For example, years of ownership for a cotton picker and combine were allowed to range from 4 to 16 years as annual operation ranged between 450 and 75 hours, and tractor ownership periods were assumed to vary from 8 to 16 years as annual usage ranged from 1,200 to 400 hours.

Other fixed costs associated with machinery ownership (interest, taxes, insurance) were computed directly from USDA's 1977 enterprise budgets (11). Hourly operating costs were estimated by adjusting the USDA's 1977 estimates by the change in prices paid by farmers for fuel (42% increase) and machinery (23% increase) from 1977 to 1979 (9,10).

Management-Labor

Although the management cost may be viewed as a part of gross revenue to the farm operator, in this analysis it was included as an itemized expense. Management is no different from machinery or other fixed, indivisible inputs when comparing the cost efficiency of various-sized farming operations, and average total costs can be reduced by expanding and more fully employing the management resource.

Many modern farming operations require the services of two men, so most of the farm budgets constructed in this research assumed at least one full-time hired worker. Each full-time worker was assumed to work a maximum of 2,500 hours annually with a maximum in any given month of 300 hours. The maximum number of available working days was reduced in selected months to reflect days lost due to weather. The farm manager with no full-time workers is assumed to spend 25% of available time handling the management function with 75% of his time spent in machinery operation. For each full-time laborer employed, an additional 10% of the manager's time is assumed to be reserved for coordinating working activities and overseeing operations. For example, the farming operation with one full-time worker has the equivalent of 1.65 man-years to complete field work in a given year, and a farmer employing two full-time laborers would have 2.55 man-years available. The size of each hypothetical farm was chosen on the basis of machinery capacity and the number of full-time workers available.

Part-time labor was assumed to be available to adequately handle seasonal peak labor needs. Due to the additional training time often necessary, part-time labor was assumed to be 10% less proficient in completing tasks than the regular labor force.

Wages paid to part-time workers were computed by adjusting the hourly wage estimates in USDA's FEDS Budget for 1977 by the Index of Farm Wages (9). It is likely that greater compensation is necessary to retain reliable, full-time help, so this analysis assumed annual salary of the full-time laborer is equal to: 1.25 x part-time farm wage x 2,500 (annual hours). The value of farm managers is difficult to assess because quality is an important variable. For this analysis, it is assumed the operator is paid at a rate three times that of full-time workers for time spent in the role of management. For time spent in machinery operation and field work, the operator's time is valued at the same rate of the full-time hired worker. A schedule of example wages and salaries assumed by the analysis is given in Table I.

Table I

SALARIES AND WAGES ASSUMED IN BUDGET ANALYSIS

	Mississippi	Texas High Plains	Arizona
Part time Labor Wages/Hour	$3.20	$3.30	$3.69
Full Time Labor Salary/Year	$10,000	$10,313	$11,531
Manager Salary/Year (No full time worker)	$15,000	$15,470	$17,297
Manager Salary/Year (one full time worker)	$17,000	$17,532	$19,603
Manager Salary/Year (two full time workers)	$19,000	$19,595	$21,909

Because machinery must be serviced and transported between fields, one hour of labor is not sufficient for one hour of machine operation. USDA FEDS budgets assume 1.2 hours of labor are required for each hour of completed field work. The same assumption is used in this analysis.

Overhead

Overhead cost generally represents the set of farming inputs which cannot be directly attributed to individual enterprises. Although there is good reason to believe a large component of overhead is fixed for the firm, data were not available to quantify accurately the cost economies associated with this item. In this analysis, overhead costs were estimated by adjusting USDA's 1977 overhead figures for each crop by the Index of Prices Paid by Farmers for all production items (9). In this analysis, therefore, the overhead is assumed to be completely variable, and would seem to understate size economies to the extent that the fixed portion of overhead could be reduced by spreading cost over more units of production.

Land

There are no obvious size economies attributable to land cost, but it does affect total expense of crop production. This analysis assumes all land is rented, and is an out-of-pocket cost to the operator. Using current rental rates seems to be a plausible approach, since it is the market-valued return on investment landlords are willing to accept. It also represents the return the owner-operator could receive on his own land if he ceased operation. Estimates of current rental rates were based primarily on data from a 1978 USDA report on cropland rental practices (14).

Variable Cost

Variable expenses, as classified in this study, include all out-of-pocket expenses excluding labor and machinery operating cost. Variable cost was estimated by adjusting the USDA's estimate for 1977 by Farm Prices Paid indices for fertilizer, chemicals, seed and interest (9,10). To simplify computations, ginning charges were assumed to be paid fully by cottonseed revenue.

ANALYTICAL RESULTS

Mississippi Delta

Estimated costs for the Mississippi Delta are contained in Table II. Production cost of 63¢/lb. of lint for the smallest farm is 12% higher than the

TABLE II

ESTIMATED COSTS PER ACRE FOR COTTON-SOYBEAN FARMS IN THE MISSISSIPPI DELTA

(Cotton Represents Approximately 34% of Total Cropland)

Item	Example Farms									
	I		II		III		IV		V	
Cropland (Acres)	423		800		1,042		1,165		1,745	
Full-Time Employees	0		1		1		1		2	
Equipment Size	4-row [a]		4-row [b]		6-row		8-row		8-row	
Costs	Cotton	Soybeans	Cotton	Soybeans	Cotton	Soybeans	Cotton	Soybeans	Cotton	Soybeans
Variable	$135.35	$ 35.42	$135.35	$ 35.42	$135.35	$ 35.42	$135.35	$ 35.42	$135.35	$ 35.42
Labor	6.40	4.61	23.17	15.45	17.67	11.35	16.47	10.11	19.57	12.53
Machinery	110.24	41.49	90.61	32.29	93.84	29.76	95.45	28.40	88.27	27.98
Depreciation	19.75	6.88	35.73	11.51	31.93	10.86	39.58	10.56	33.62	10.44
Int.-Taxes-Ins.	10.48	4.21	15.21	4.99	14.00	5.06	18.93	5.22	14.40	4.75
Fuel-Repairs	22.01	12.90	39.67	15.79	34.34	13.84	36.94	12.62	35.42	12.79
Custom Harvesting	58.00	17.50	0.00	0.00	13.57	0.00	0.00	0.00	4.83	0.00
Overhead	9.90	9.90	9.90	9.90	9.90	9.90	9.90	9.90	9.90	9.90
Management-Labor	43.45	31.29	27.20	18.14	21.31	13.69	19.55	12.00	14.25	9.13
Land	60.00	30.00	60.00	30.00	60.00	30.00	60.00	30.00	60.00	30.00
Total	$365.34	$152.71	$346.23	$141.20	$338.07	$130.12	$336.72	$125.83	$327.34	$124.96
Per Production Unit [c] (lb.,bu.)	63.0¢	$6.94	59.7¢	$6.42	58.3¢	$5.91	58.1¢	$5.72	56.4¢	$5.68

[a] 100% custom harvesting: $58/acre for cotton, $17.50/acre for soybeans.

[b] Maximum capacity of owned harvesting machinery (one 2-row picker and one 4-row combine) assumed to be 275 acres of cotton and 525 acres of soybeans.

[c] Assumed yields of 580 lbs. for cotton and 22 bushels for soybeans are approximate long term averages for the Delta.

cost for the largest farm employing two men and 8-row equipment. Similarly, soybean cost per bushel is 22% higher.

Although the labor costs are shown to increase with size, total man-power costs are reduced significantly by the use of larger machinery and increased reliance on hired workers for machinery operation. For the farm using 4-row equipment and employing no full-time workers, out-of-pocket labor cost (for part-time help) is very low. However, the management-labor item, representing the cost of employing his own services, is relatively high. The manager is substituting his own time for that of hired machinery operators. Based on the assumed differences in payment for laborers and management, the largest farm realizes a saving of $16.03 per acre of cotton in man-power cost.

Savings are also realized in the machinery component. Because the smallest farm is assumed to own no harvesting equipment, its depreciation cost is small, but total machinery costs, which include the charge for custom harvesting, is much higher. Comparing the 423-acre farm with 4-row equipment to the 1,745-acre farm using 8-row implements, machinery saving of $21.97 per acre of cotton is realized.

Texas High Plains

In contrast to Mississippi where cotton acreage is well below that for soybeans, recent cropping patterns on the High Plains have been dominated by cotton. Therefore, hypothetical farming operations for this region were assumed to consist primarily of cotton. Farms were assumed not to have access to irrigation water. Although irrigated and dryland farming are both common to the area, use of irrigation is declining as natural gas prices climb, and the water table dwindles.

The cost analysis for the High Plains region is given in Table III. A comparison of total cost per pound of cotton shows costs on the smallest farm

TABLE III

ESTIMATED COSTS PER ACRE FOR DRYLAND COTTON-GRAIN SORGHUM FARMS IN THE TEXAS HIGH PLAINS

(Cotton Acreage Represents Approximately 70% of Total Cropland)

Item	Example Farms									
	I		II		III		IV		V	
Cropland (Acres)	435		960		1,120		1,290		2,000	
Full-Time Employees	0		1		1		1		2	
Equipment Size	4-row [a]		4-row [b]		6-row		8-row		8-row	
Costs	Cotton	Sorghum	Cotton	Sorghum	Cotton	Sorghum	Cotton	Sorghum	Cotton	Sorghum
Variable	$ 14.03	$ 12.58	$ 14.03	$ 12.58	$ 14.03	$ 12.58	$ 14.03	$ 12.58	$ 14.03	$ 12.58
Labor	5.26	3.26	16.26	10.13	13.78	8.59	11.93	7.41	14.62	9.05
Machinery	62.99	34.74	55.47	30.38	56.45	32.59	55.58	32.08	52.21	26.76
Depreciation	26.60	5.96	19.66	3.68	22.63	12.43	22.48	12.50	20.54	9.59
Int.-Taxes-Ins.	12.53	3.54	8.51	1.81	9.99	6.74	10.10	6.53	8.88	4.25
Operating	23.86	10.24	21.90	9.89	23.83	13.42	23.00	13.05	22.79	12.92
Custom Harvesting	0.00	15.00	5.40	15.00	0.00	0.00	0.00	0.00	0.00	0.00
Overhead	8.12	8.12	8.12	8.12	8.12	8.12	8.12	8.12	8.12	8.12
Management-Labor	39.93	24.75	20.47	12.75	16.79	10.46	15.23	9.48	11.00	6.81
Land	30.00	15.00	30.00	15.00	30.00	15.00	30.00	15.00	30.00	15.00
Total	$160.33	$ 98.45	$144.35	$ 88.96	$139.17	$ 87.34	$134.89	$ 84.67	$129.98	$ 78.32
Cost per unit [c] (lb., bu.)	57.7¢	$3.79	51.9¢	$3.42	50.1¢	$3.36	48.5¢	$3.26	46.8¢	$3.01

[a] Sorghum is 100% custom harvested at an estimated cost of $15/acre.

[b] Custom harvesting rate for cotton is $20 per acre, with approximately 75% of acreage harvested by own machine.

[c] Assumed yields of 278 pounds for cotton and 26 bushels of sorghum are approximate long-term averages for the High Plains.

to be 23% higher for cotton and 26% higher for sorghum than those for the largest farm. Again, a primary source of savings is the reduction in man-power needs as machinery size increases. Greater cost saving is made possible because hired labor comprises a relatively larger proportion of total costs.

Custom grain harvesting is a fairly common practice for this area, and the two smallest farms reduce costs significantly by relying on custom operators. The 1,120 acre farm is assumed to own a combine, although little per acre cost saving is realized from the combine investment until acreage exceeds this level.

Arizona

Cotton production in the Far West tends to be more labor intensive with the time required for irrigation. Consequently, the average number of laborers per farm is considerably larger than for the other two regions, and labor/management costs are substantial for even the most efficient operator.

In this example (Table IV), the smallest farm is undersized with respect to the machinery complement, and the excessive capacity proves to be a very costly luxury. Although investment in a picker can be justified when compared to custom rates, the smallest farm is only utilizing approximately one-third of the picker's annual capacity.

The smallest farm in this situation had costs that were 17% higher than the largest farm for both cotton and wheat. This analysis assumed no size economies were possible from improved irrigation efficiency, which may be a limitation.

Whole Farm Costs

Using gross sales to represent total farm output, efficiency by size may be viewed on a whole farm basis. The cost curves in Figure 1 were constructed assuming prices of 62¢ for Arizona and Mississippi cotton, 56¢ for Texas cotton, $4.00/bushel of wheat, $2.40/bushel of sorghum and $6.55/bushel of soybeans.

TABLE IV

ESTIMATED COSTS PER ACRE FOR IRRIGATED COTTON-WHEAT FARMS IN ARIZONA

(Cotton Acreage Represents Approximately 66% of Total Cropland)

Item	I		II		III		IV		V		VI	
opland (Acres)	180		400		600		870		1,090		1,620	
ll-Time Employees	0		1		2		3		4		6	
uipment Size	4-row [a]		4-row		4-row		6-row		6-row		8-row	
Costs	Cotton	Wheat	Cotton	Wheat	Cotton	Wheat	Cotton	Wheat	Cotton	Wheat	Cotton	Wheat
riable	$261.96	$129.00	$261.96	$129.00	$261.96	$129.00	$261.96	$129.00	$261.96	$129.00	$261.96	$129.00
bor	12.14	6.07	42.27	23.46	58.06	29.03	58.36	29.19	61.24	30.40	61.54	30.76
chinery	147.89	56.30	104.60	44.45	94.41	39.17	100.06	36.14	93.15	32.63	95.49	32.15
Depreciation	64.87	13.93	40.22	7.29	34.18	14.78	37.59	13.54	33.01	11.50	32.72	10.25
Int.-Taxes-Ins.	34.88	8.54	17.60	4.04	12.98	8.69	14.72	6.99	12.60	5.65	11.96	4.30
Operating	48.14	13.83	46.78	13.12	47.25	15.70	47.75	15.61	47.54	15.48	50.81	17.60
Custom Harvesting	0.00	20.00	0.00	20.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
erhead	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00	6.00
nagement-Labor	115.31	57.66	58.96	29.26	43.81	21.91	33.40	16.70	29.26	14.54	23.06	11.53
nd	115.00	60.00	115.00	60.00	115.00	60.00	115.00	60.00	115.00	60.00	115.00	60.00
tal	$658.30	$315.03	$588.79	$292.17	$579.24	$285.11	$574.78	$277.03	$566.61	$272.57	$563.05	$269.44
st Per Unit [b] lb., bu.)	66.5¢	$4.50	59.5¢	$4.17	58.5¢	$4.07	58.1¢	$3.96	57.2¢	$3.89	56.9¢	$3.85

Custom harvesting costs for wheat estimated from Arizona Extension Budgets (1).

Average yields of 990 lbs. for cotton and 70 bushels of wheat approximate long-term averages for Arizona.

Because farm prices are subject to wide variation and the cropping mix was chosen on the basis of historical plantings rather than current profitability considerations, the absolute value of cost per dollar of revenue (measured on the vertical axis) may not be an accurate assessment of regional profitability of cotton farming. The primary concern of this study is the relative efficiency of various sized farms and this is insensitive to the level of farm prices assumed. Maintaining a constant relation between acreage planted to each crop insures this.

The curves shown in Figure 1 should not be construed as long-run average cost curves in the traditional sense. No effort was made in this study to locate minimum cost points. The curves are simply lines connecting a set of points which represent costs and revenues for example farming operations. Farm size in each example was chosen so as to maximize output with respect to constraints on available time of permanent laborers and machinery capacity. Of course, cost minimization and profit maximization are not always compatible. If the analytical objective is to determine size economies which may be achieved in a true farm setting, rather than those theoretically possible, the approach taken here may have considerable merit.

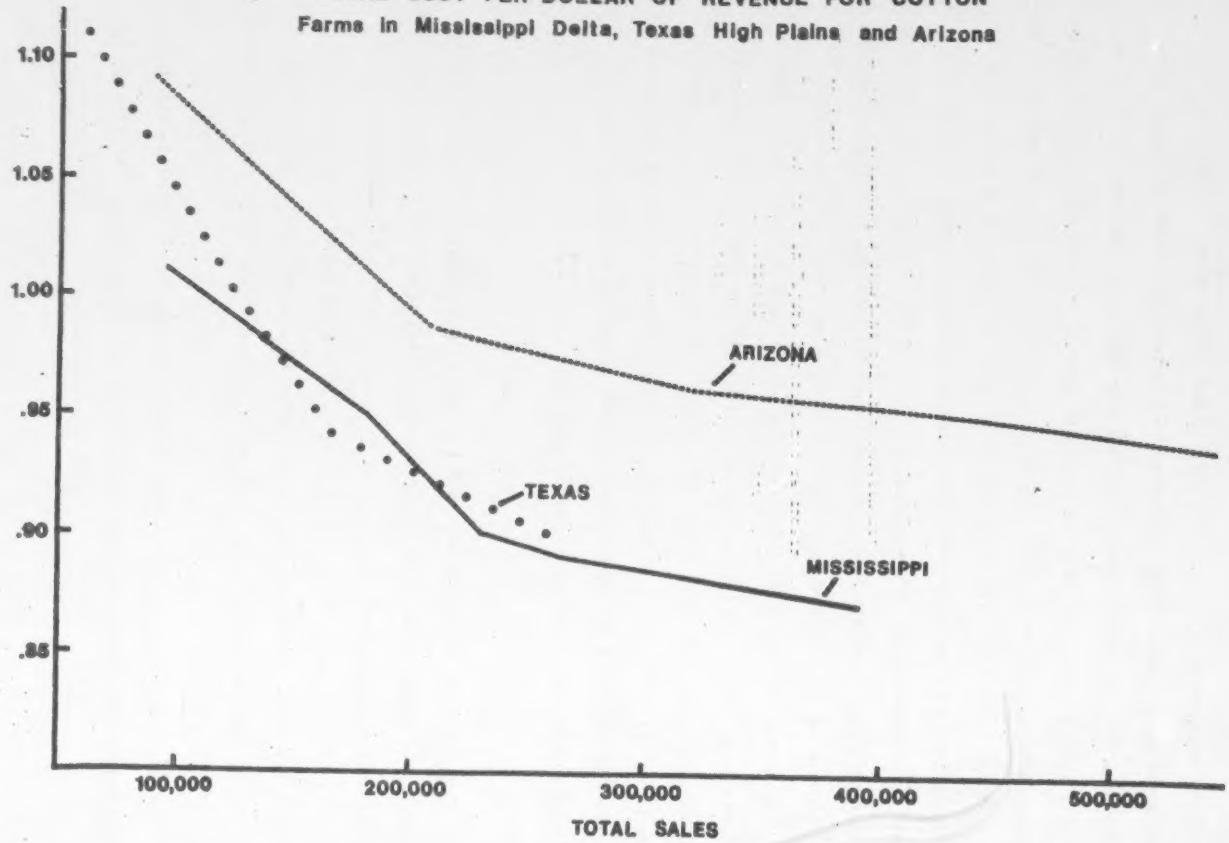
In each region, the farmer hiring no workers and running 4-row equipment is not adquately utilizing the capacity of fixed resources, resulting in high costs of operation. Not considered in this analysis is the possibility of the one-man farm using larger capacity machinery. However, little would be gained as higher fixed machinery cost would tend to offset any gain from greater productivity of the manager's machinery labor.

It is clear from Figure 1 that substantial size economies exist throughout the range of example farms considered. Several previous studies show somewhat different results. Madden and Davis (3) found few size economies beyond a one-

FIGURE 1

TOTAL COST PER DOLLAR OF REVENUE FOR COTTON

Farms in Mississippi Delta, Texas High Plains and Arizona



man farm using six-row equipment for irrigated cotton farms on the Texas High Plains. However, their analysis failed to consider any machinery larger than 6-row, and the cost of management was not itemized as an expense. Both of these factors tend to understate the efficiencies associated with size. For farms in Fresno County, California, Moore (5) found essentially all size economies could be achieved by farms in the 600-1,000 acre range, but Moore's analysis also seems to have limited applicability in assessing modern farming efficiency. His study was completed in 1965 and appears heavily influenced by assumptions regarding cotton allotments (which is no longer a factor influencing cropping decisions) and the use of one-row cotton pickers (which are no longer manufactured).

In a more recent sutdy (12), the USDA estimated a 640-acre cotton farm in the Westlands Water District in the San Joaquin Valley could produce lint at a 12% savings over a 160-acre farm. The 640-acre farm was the largest size considered in this study. Certainly the development of larger equipment and harvesting equipment of higher capacity have tended to expand the range in farm size over which economies may be realized.

CONCLUSION

The analysis presented here has attempted to estimate technical economies of size for modern commercial farms in three major-producing areas of the cotton belt. The approach used is a form of synthetic whole-farm budgeting. Earlier studies have indicated most size economies on cotton farms are achieved by relatively small operations. However, these studies appear to have limited value considering technological changes and improvements in production methods which have occurred.

General findings of this study indicate modern cotton farms on the Texas High Plains and the Mississippi Delta can achieve some substantial savings by farming cropland in excess of 1,000 acres. For Arizona, size economies are possible by expanding above the 1,000 acre level, but the per unit cost savings tend to be less, because a primary source of size economies, the labor-machinery mix, comprises a relatively smaller portion of total costs in Arizona cotton production.

There are also some factors which limit the general applicability of the results presented here. First, it is nearly impossible to describe "typical farms" in even the most narrowly defined regions. No two farms have the same set or quality of resources. Two farm managers rarely follow the same set of production practices, and management capabilities vary widely among farms. Location of farming plots can also affect efficiency. If all land tracts included in an operation were contiguous, or nearly so, the savings in time and transfer costs would be substantial. However, this is rare and its advantage would have to be weighed against the risk of a localized natural disaster destroying crop potential for the whole farm.

There are other reasons for believing that actual operating costs for real farms may vary somewhat from those presented here. For example, a farmer wishing to cover some fixed cost invested in a cotton picker could do some custom work if cotton acreage were available and if he had extra time during the harvest season. Additionally, some farming areas could have surplus labor, in which case, the fixed cost of a full-time worker would not always be necessary.

Another point to consider is that this analysis was completed in a static framework. Actually, farmland, machinery and other resources are combined into a farming unit over a period of years. Depending on goals of the operator and changing circumstances, the set of resources on a given cotton farm might or might not resemble one of those reviewed in this analysis. There are reasons to believe the machinery costs estimated here are much lower than what may be more normal for the practicing farmer. The equipment in the hypothetical farms was chosen so that only the common field operations for a given region can be completed. Farmers may tend to have more than adequate machinery to meet any unforeseen emergency or possibly compensate for management errors in timeliness of operation. It is also uncommon for a given farm to stick with the same cropping mix over a long period of time. Price movements or need for rotation, affecting the proportion of acreage in each crop, can reduce the machinery efficiency of the overall operation.

All of these factors tend to cast doubt on the realism of the assumptions on which this analysis was based. However, most of these factors cannot be measured and could be used as criticism of any such synthetic firm analysis. It should be noted that the majority of these other factors tend to affect costs for all sizes of farms, and the estimated economies may not be biased to any great degree.

The fact remains that larger farmers simply have more flexibility and a greater number of options in selecting a combination of resources which minimizes cost. Because of the very large investment required in harvesting equipment, the most critical factor in efficient cotton production is near-optimal use of the picker or stripper, and per unit costs tend to decline rapidly up to the capacity of harvesting units. But even beyond this level of production, there are significant size economies to be gained.

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Statement of

NATIONAL COUNCIL OF FARMER COOPERATIVES

presented to the

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
1310 Dirksen Senate Office Building
Washington, D. C. 20510

regarding

S. 1867
The Reclamation Reform Act of 1981

December 1981

"AMERICA'S FARMER OWNED BUSINESSES"

Statement on S. 1867
The Reclamation Reform Act of 1981

The National Council of Farmer Cooperatives is a nationwide association of cooperative businesses which are owned and controlled by farmers. Its membership includes 120 regional marketing and farm supply cooperatives, the 37 banks of the cooperative Farm Credit System, and 31 state councils of farmer cooperatives. National Council members handle practically every type of agricultural commodity produced in the U.S., market these commodities domestically and internationally, and furnish production supplies and credit to their farmer members and patrons. Two-thirds of U.S. farmers are affiliated with one or more cooperatives. The National Council represents about 90 percent of the more than 6,700 farmer cooperatives in the nation, with a combined membership of nearly 2 million farmers.

A substantial number of the farmer cooperatives that we represent here in Washington, D.C., are owned by farmers based in the West, most notably in California, where nearly one-fourth of all table food for the United States is produced.

The National Council of Farmer Cooperatives has an official policy supporting efforts to amend the Reclamation Act of 1902, to eliminate and clarify many of its outdated and unrealistic provisions. That policy, adopted by our members at their 1978 annual meeting, reads:

> Acreage Limitation Regulations -- The National Council of Farmer Cooperatives is vitally concerned with the potential impact of acreage limitation regulations on the welfare of farmers and cooperatives. The enforcement of such regulations would destroy many long-established and successful farming enterprises. The Council supports efforts to amend the Reclamation Act of 1902 to eliminate outdated and unrealistic provisions.

The two-tiered concept in Titles I and II of both H.R. 4265 and S. 1867 appears to provide the necessary flexibility. Under this option, a farmer has the opportunity to determine the size of his operation receiving reclamation water, depending on the amount of capital and risk he is willing to take. Such an option helps equate the position of the Western farmer with that of his fellow producers elsewhere in the nation. For, nowhere else in our country is a farmer restricted by federal law from expanding his productive farm acreage as he needs and is able to acquire. We realize that while some may consider it necessary to limit ownership of acreage receiving federal reclamation water, we believe it is vital to the agricultural economy to permit a producer to expand his production to whatever additional acreage he finds economically feasible by leasing. The actual subsidy benefits of such leasing arrangements accrue to the landowner and are, therefore, limited by acreage limitation.

✓Title I of both bills clarifies portions of existing law that have long needed clarification. The language in both bills spells out requirements regarding ✓residency, ✓disposal of excess lands and the ✓time allocated to complete such transactions, and ✓validates agreements made earlier with the Secretary of Interior. With this section, a farmer's rights and obligations of farming within a Reclamation district will be clearly defined.

Title II provides an option to either remain under the existing acreage limitation law, and lease as many additional acres as needed, or to expand ownership of land receiving reclamation water to a total amount to be determined by the Congress in the final bill. The farmer would pay "full cost of delivery" of water on any additional land leased.

H.R. 4265 refers to the farmer having this option; S. 1867 appears to place the option with the District. We urge that the language ✓of H.R. 4265 be utilized in the final bill, as this is a choice we feel must be made by the individual farmer rather than by the

District as a whole.

✓We urge that the determination of "full cost" of delivery of water ✓be based on the formula presented in H.R. 4265. However, we ✓strongly urge that any interest rate be as reasonable and affordable as possible. An example would be at no more than that rate in effect when the project contract was signed.

An unreasonably high cost of water will force farmers to limit their land holdings beyond what they might otherwise have been able to operate. If interest rates are set so high that additional water costs become unaffordable, we are concerned that this will become an empty option, for economics alone could limit farm size. There could be no additional leasing of land, nor additional purchase of water for that land. The end result will be a loss to the farmer, the consumer and to the Treasury.

The National Council of Farmer Cooperatives support both bills in principle and feel that together they provide an excellent vehicle for serious consideration early in 1982.

National
Farmers Union

STATEMENT OF

PAUL R. SACIA
LEGISLATIVE ASSISTANT
NATIONAL FARMERS UNION

PRESENTED TO

THE U.S. SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

RELATIVE TO

AMENDMENTS TO THE 1902 RECLAMATIONS ACT

Washington, D.C.
December 10, 1981

At the 79th Annual Convention of the National Farmers Union held March 1-4, 1981, at Orlando, Florida, delegates and members adopted a policy statement again reaffirming the "basic objective of the Reclamation Act of 1902 to have resident family farm/ranch operators on the land receiving project water."

The Farmers Union policy declaration "decried lax enforcement of this statute, which has permitted vast acreages of project lands to come under the control of conglomerate corporations, land speculators, and investor syndicates."

The 1976 Federal Court decision mandating enforcement of the 160-acre limitation of the 1902 Act and the subsequent Department of Interior regulations pertaining to "excess lands", have provided the kind of opportunity needed to restore the family farm objective of the reclamation lands projects.

Our convention espoused the belief that legislative and administrative actions will be needed to evolve a realistic and satisfactory on-going policy:

1. We believe the Reclamation law should contain a residency requirement similar to that in the Homestead Act for new farmers and provide flexibility for those seeking to retire for age or health reasons.

2. An absolute limit of 320 acres per individual should be set on the acreage for which project water may be obtained by a farming entity. Water for 640 acres of Class I land, owned or leased, appears to be ample for a viable family farm homestead unit without paying additional charges for project water.

Suite 600, 1012 14th Street, N.W., Washington, D.C. 20005 – Phone (202) 628-9774

3. A Class I equivalency formula should be enacted which would allow water for larger acreages of land of lesser productivity. We would find acceptable a formula allowing project water for 800 acres of Class II land; 1,062 acres of Class III land; or 1,280 acres of Class IV land. The Class I equivalency formula should take into consideration cropping limitations imposed by latitude and climate, farm production costs, correlated with physical factors such as soil, topography, drainage, and quality of water.

4. Water rights of individuals in reclamation states must be recognized when these rights are adjudicated on water projects prior to Water and Power Resource Service or Corps of Engineers involvement.

5. Purchasers of excess lands should be selected from among qualified applicants intending to be resident farm owner-operators (homesteaders) engaging in farming as their principal livelihood.

In light of our organization's concerns, we can only be unalterably opposed to the passage of S. 1867. The bill nullifies many protections for family farmers inherent in the present law, while sanctioning past violations. Among the most objectionable provisions of S. 1867 are:

*Repeal of the residency requirement. This would represent a fundamental undermining of the law, resulting in the promotion of absentee ownership and investment schemes that exclude family farmers.

*Raising the acreage limitation from 160 acres to 1600 acres of Class I land or its equivalent anywhere. This provision would sharply cut the total "excess acres" that are supposed to be for sale to family farmers. The new limit would exceed more than 97% of all western farms.

*The term "qualified recipients" includes individuals, as defined in 201(a), but it also includes legal entities (corporations, partnerships, etc.) that benefit up to twenty-five such "individuals". Since the term "individual", as defined, describes a family, corporations or syndicates with investors from up to twenty five different families may qualify for water deliveries as qualified recipients. This provision promotes the continuation of land ownership by absentee investors rather than by owner-operators who will be engaged in farming or ranching as their principle means of support.

*The worst offenders are exempted. The bill contains exemptions for several projects where the acreage, residency, and anti-speculation provisions have been widely violated, and where excess land owners have failed in their attempts to have the courts approve such violations.

*"Buyout" provisions allow wealthly excess land owners to circumvent spirit of law. This provision would exempt those projects where irrigators could afford to prepay their debt to the government. Even if the entire calculable federal subsidy is included in the full cost, which is to be payed, the courts have expressly rejected this approach to reversing national policy.

We firmly believe that adherence to our aforementioned policy would cause hardship to few, if any, family-scale farmers, while it would open up the possiblity for hundreds of beginning farmers and ranchers to acquire excess lands now held by banks, railroads, oil compaines, insurance firms, and syndicates, illegally.

In many ways, we find S. 1867 to be a total reversal of the spirit of the 1902 Act and a sweeping legalization of the abuses witnessed in recent decades. We urge your strong opposition to S. 1867.

Thank you for your consideration.

DEC 22 1981

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December 16, 1981

Honorable James A. McClure, Chairman
Energy and Natural Resources Committee
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator McClure:

On behalf of the members of the Washington State Farm Bureau, we would like to have our statement on S. 1867, Reclamation Law Reform, made a part of the hearing record.

On principle, we are still opposed to acreage restriction, either owned and/or leased, placed on farmers. The issue of farm size is inappropriate one for government and total repeal would be the most sensible and cost effective approach.

We subsidize airports, but we do not put a limit on the number of airplanes owned or flown by one airline and we continue to allow mergers or sales between airlines. Why should we restrict farmers living on reclamation projects?

We support provisions of S. 1867, which will exempt bonafided religious and charitable organizations and paid out reclamation projects. We also support provisions to eliminate the residency requirement and exempt Corp of Engineer Projects.

We believe it is vital that this issue be put to rest as rapidly as possible, so farmers in reclamation projects can direct their attention to their farming operation, rather than, wondering if or when they might be put out of business due to adverse rules and regulations.

Respectfully,

Herb Streuli

Herb Streuli
President

lh

cc: Washington State Senators

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December 4, 1981

The Honorable James A. McClure
Engery and Natural Resources Committee
U. S. Senate
Washington, D. C.

Dear Senator McClure:

Enclosed herewith is a copy of the Statement of First and Second Point Interest of Kern River Service Area, Kern County, California on Modernization of Reclamation Law which we request be included in the record on the hearings on S.1867, December, 1981.

The matters set forth in the Statement reflect the problems raised by acreage limitation in connection with the Isabella Project on the Kern River in Kern County, California and support for the more reasonable solutions provided in sections 104 and 106 of S.1867.

We greatly appreciate your consideration of the material contained in this Statement.

Very truly yours,

ACPaulden
A. C. PAULDEN

ACP/jfh
Enclosure

December, 1981

STATEMENT OF FIRST AND SECOND POINT INTERESTS OF KERN RIVER SERVICE AREA, KERN COUNTY, CALIFORNIA ON MODERNIZATION OF RECLAMATION LAW

This is prepared on behalf of the representatives of the 370,000 acres of irrigated farmland in the Kern County portion of the Kern River service area which are entitled to the conservation storage benefits under a contract among the United States and North Kern and Buena Vista water storage districts et al., dated October 23, 1964, affecting the Isabella Dam and Reservoir project on the Kern River in the southern San Joaquin Valley. This area is shown on the attachments hereto.

For the reasons herein expressed we recommend:

1. A uniform exclusion from all provisions of Reclamation law of all Federal projects constructed by the Corps of Engineers primarily for flood control purposes, unless Congress should expressly declare to the contrary. For specific language we recommend section 104 of S. 1867 and H.R. 4265, 97th Congress, section 8(d) of Committee Print, S. 14, S.Rept. No. 96-235, 96th Cong., 1st Sess. pp. 3-4 (1979); and section 7(d) of H.R. 6520, H.R. No. 96-1158, 96th Cong., 2nd Sess. (1980).

2. An exemption upon full repayment of capital costs of a Reclamation project, including lump sum payments, heretofore paid. For specific language we recommend subsection (a) of section 106 of either S. 1867 or H.R. 4265, 97th Congress.

The Isabella Dam and Reservoir, authorized by the Flood Control Act of 1944 (58 Stat. 887), was completed in 1954 by the Corps of Engineers primarily for flood control purposes with attendant irrigation benefits. The United States allocated the capital cost and the annual operation and maintenance costs of the Project as follows:

	%	$
Flood Control	73.3	15,469,000
Irrigation	21.7	4,573,000
Power	5.0	1,051,000
TOTAL	100.0	21,093,000

Our objection is to the recent attempts by the United States Bureau of Reclamation to apply excess land and antispeculation provisions of Reclamation law to the farmers' privately owned water, particularly since no Federal conveyance facilities are available, the Federal facilities are not essential to the agricultural use of the land and the farmers, pursuant to the express terms of the contract, have paid the total construction costs allocated to irrigation conservation benefits on the first day the contract became effective, thereby entirely eliminating the "interest free" subsidy otherwise available as a project benefit under Reclamation law.

The attempt to impose these unbargained for restrictions after 23 years of operation, upon farmers who have the uncontrolled option to determine whether their water will be stored in Isabella Reservoir for conservation purposes, will not achieve the underlying social purpose of Reclamation law of creating small family farms in this service area. The benefits available to them from this project are insufficient to force or encourage them to involuntarily sell their farming operations in piecemeal fashion, at ex-project prices, or at all. This follows because the Isabella Project has none of the attributes of a Reclamation project.

The United States owns no water and provides no transportation facilities in connection with this project. Tracing its irrigation history to the early 1870's, all the normal flows of the Kern River have been fully beneficially used by First and Second Point diverters. Historically, the water has been diverted through the hundreds of miles of canals, ditches and laterals developed without governmental assistance. Flows in excess of demand for direct irrigation uses have been stored on the valley floor in conservation storage facilities and by groundwater spreading operations for recapture through existing water wells. All of these facilities were developed in private ownership by these farmers without assistance from the United States government.

By making storage available through Isabella Reservoir, when it is not needed for flood control purposes, the federal government affords these farmers a more efficient method of use of their water through a reduction in evaporation losses and use of electrical energy, reducing pumping costs. The First and Second Point service areas were fully developed to agricultural uses without this added storage service. If need be they can again be irrigated through the existing less efficient facilities without maximizing Isabella storage, to avoid forced sales of the lands.

The Project caused no great change in the historic cropping patterns in this service area. The productivity of the land will not be affected if the farmers elect to cause Isabella Reservoir to be operated without maximizing the use of their conservation storage space; hence, these farmers receive no uncompensated benefit in the form of enhancement of the productivity of their lands.

These farmers receive no "flood control subsidy" relating to their lands. While flood control benefits to others have paid for the project approximately three times, this 450,000 gross acres at First and Second Point receive, at best, minimal flood protection benefits. Such benefits run to the Greater Bakersfield metropolitan area of 200,000 people. The savings to this metropolitan area during two recent flood years, 1966 and 1969, have totalled $59,400,000.00, 2.8 times the total projected capital cost. Thus, the farmers who have paid the full cost of the conservation storage benefits receive minimal benefits from the unreimbursed investment by the United States in this flood control facility.

These farmers wanted nothing to do with Reclamation law or the "interest free" subsidy available thereby. The Isabella contract required lump sum payment of the full cost of the conservation benefits. In a one-of-a-kind transaction in the now 78-year history of Reclamation law, on March 31, 1965, the first business day the contract became effective, these farmers paid the United States the full capital cost of the rights to have the reservoir operated for conservation storage, thereby eliminating the "interest free" subsidy. To this day, their lands stand as security for payment of the debt service upon the bonds sold to fund the payment. Congress has granted numerous exemptions upon full payment of construction costs on individual projects on a case-by-case basis. On startlingly similar facts, the lump sum payment made in 1965 on the Russian River Project provided one such exemption although the payment was discounted to reflect interest. Equal treatment under the law demands that Congress adopt a uniform exemption equally applicable to all contractors that have made full repayment.

By failing to make the maximum use of the conservation storage available in Isabella, these farmers recognize that all farmers in the 370,000 acres of irrigated farmland in the service area will have their operating costs increased to reflect increased spreading of water and increased pumping from the groundwater. However, these added burdens cannot be visited solely upon excess lands and will accrue equally to the smaller operators who are less able to bear the added cost of pumping and necessary capital improvements. To the extent district costs are increased, they are borne on an equal rate per acre or per acre foot of use.

Those who rely for their livelihood upon, as well as those who wish to enjoy the use of, the major water-oriented recreational area which has developed about the Isabella Reservoir over the past 23 years of project operation, likewise will be detrimentally affected by a failure of the farmers to continue to maximize the use of this conservation reservoir. At all times these recreation interests have recognized the need for and have attempted to obtain an increase in storage for recreational purposes.

While recreation is not an authorized project purpose, such benefits have been made available in most years as an indirect result of the election of these farmers to store their privately owned water in Isabella Reservoir. This recreation area is located within 153 miles of the Los Angeles metropolitan area and 40 miles from the Greater Bakersfield metropolitan area. The area supports a present population of 8,600 people. It is estimated that over the 23 year history of reservoir operation, the area has averaged in excess of 1,000,000 visitor days per year. During the Memorial Holiday weekend this year, the area experienced approximately 100,000 visitor days during a time of near maximum storage. While the contractual arrangements are such that the County of Kern can demand a 30,000 acre foot pool for recreation purposes, such a body of water is insufficient to meet the developed recreation needs.

The amount of power available for use of others will be detrimentally affected by a failure to maximize conservation storage. First, these farmers will be required to increase their consumption of power to reflect added pumping from the underground. Second, the conservation storage has increased the production of power on Kern River by the attendant headwater benefits. Such power is not available for use in the First and Second Point areas; hence, this hardship will not fall upon these farmers except as all may suffer from decreases in availability.

These farmers are and have been good neighbors and do not wish that such a situation develop in this area. However, if the law is that acreage limitation and anti-speculation provisions of Reclamation law apply to such a flood control project, with such conservation benefits, these unfortunate results are inherent in the alternatives to the involuntary sales of their land at exproject values.

The farmers feel justified in using other alternatives available to them. The farmers feel they have been misled by their government as to their involvement with Reclamation law. First, the project was authorized for construction by the Corps of Engineers without reclamation involvement. Second, they invested in excess of $1 million in the project in reliance upon the longstanding payout principle as freeing the project from reclamation involvement. By press release dated January

19, 1961, Secretary of Interior Seaton declared such a principle to be "in accord with the consistent views of all of the chief legal advisers of the Department for nearly half a century."

Although the permanent storage contract required that the districts representing First and Second Point make a lump sum payment of the full construction costs attributable to conservation storage, it also contains provisions for the application of acreage limitations applicable only to such storage use, if such limitations are otherwise required by law. Such a provision was included in this second permanent storage contract approved by these farmers at the insistence of the United States, long after the farmers first involved themselves in this flood control project and invested their funds under assurances and understandings with Federal Officials that such limitations would not be a requirement of their participation.

The acreage limitation provisions were included in the "second" repayment contract under the threat by then Bureau of Reclamation that $1,044,389.48 of the funds they had paid to the United States under annual temporary contracts beginning in 1956 would be forfeited to the United States. These funds were invested under the longstanding Bureau principle that lump sum payments would terminate the application of Reclamation law.

Although the matter is one of longstanding dispute, the Water and Power Resources Service, now using the Pine Flat case [United States v. Tulare Lake Canal Company, et al., 340 F.Supp, 1185 (1972), 535 F.2d 1093 (C.A. 9, 1976); cert. denied 429 U.S. 1121 (1977)] as precedent, has advised these districts that it is impermissible for them to any longer deliver water which the districts, under orders from their landowners, elect to store in Isabella Reservoir for use upon lands in excess of a properly designated 160 acre tract. As elsewhere discussed, the districts cannot withhold the water from the rightful owners for the benefit of others.

Apparently, since deliveries have not been so restricted for the 23 years the districts have stored their water in this project, the excess landowners will not be afforded an opportunity to execute recordable contracts without further litigation as to the meaning of the contract. In this connection, numerous sales of these going farming operations in excess of 160 acres have occurred during the 13 years of operation under the permanent contract. The net result is that if these farmers elect to store their water in Isabella, they will have to sell at less than they paid for or borrowed upon their lands if the approved price reflect any substantial project benefit. This they are not apt to do. If the price does reflect minimal project benefits, the buyers of the small farms would pay full value for the land if they have the financial capability to pay such prices and operate the land.

Since Reclamation law has no applicability to the natural flow of the Kern River or to releases of river water stored in the Reservoir for flood control purposes, the continued involvement of the Bureau of Reclamation in the Isabella Project will not be to oversee the creation of small family farms in this service area. The facts are such that their function will be to perpetually police the project service area to assure that the districts limit their deliveries of such water as they elect to store, if any, to 160 acre tracts of eligible lands. Although such policing will give assurance that the law is not being violated, it is a waste of the talents of the Bureau. It will not lead to the implementation of the broad social purpose to be served by that law of creating small family farms.

Accordingly, we recommend that Reclamation law be amended to provide:

1. A uniform exemption of all federal projects constructed by the Corps of Engineers primarily for flood control purposes from the acreage, residency and anti-speculation provisions of Federal reclamation law unless Congress should expressly declare to the contrary; and

2. An exemption upon payment of the full construction costs of a Reclamation project as required by a repayment contract.

KERN RIVER SERVICE AREA, KERN COUNTY, CALIFORNIA

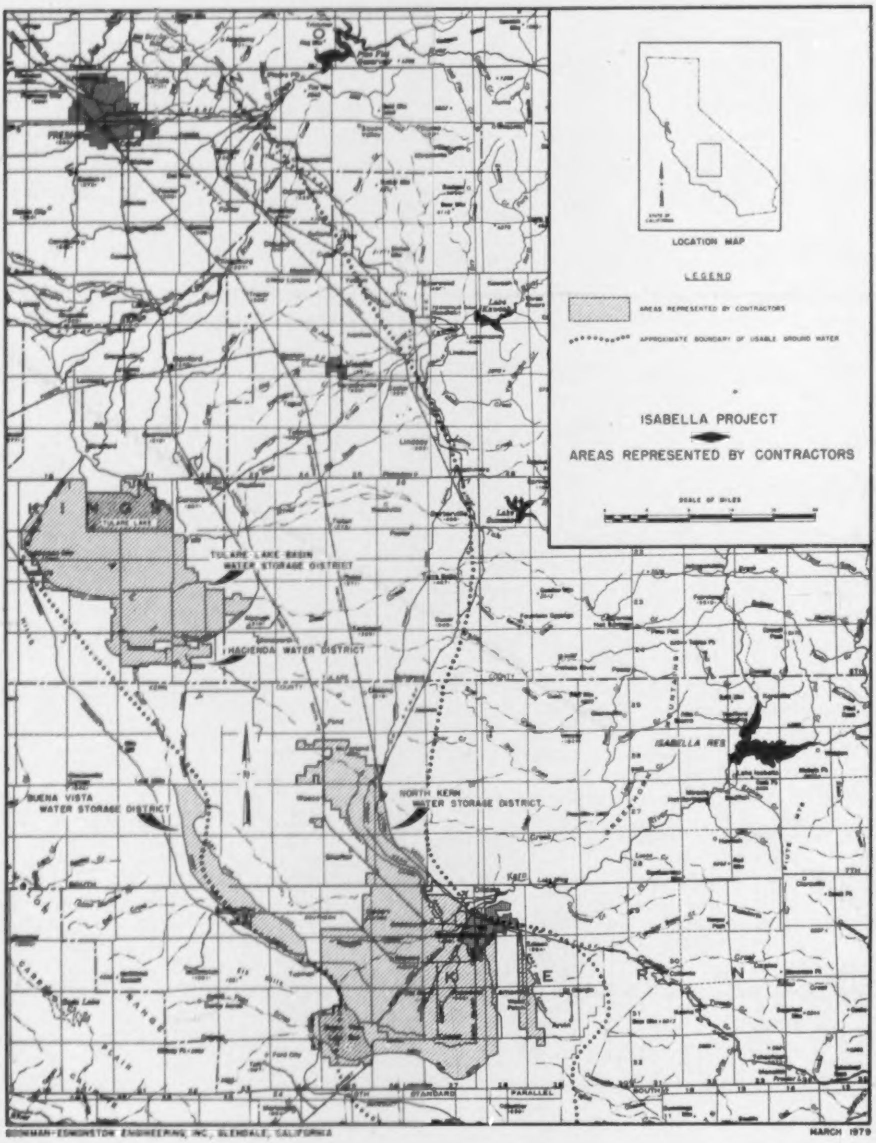
Agricultural Districts	Gross Acres	Irrigable Acres	Estimated Irr/Acres	Acres Served Surface Water
FIRST POINT DIVERTERS:				
Modified(1)				
Cawelo Water District(1a)	47,000	38,500	37,000	26,000
Kern Delta Water District(2)	127,000	118,000	106,500(3)	106,500(3)
Kern River Canal & Irr. Co.(1a)	7,500	5,000	5,000	5,000
Kern-Tulare Water District, K.C. Ptn.(1a)	23,800	22,200	16,000	16,000
North Kern Water Storage Dist.(1b)	60,000	56,000	56,000	28,000
Rag Gulch Water District(1a)	3,300	3,000	3,000	3,300
Rosedale-Rio Bravo Water Storage District(1c)	43,000	37,000	28,000	0
Pioneer Imp. Dist. of North Kern Water Storage Dist.(1d)	(62,500)	(56,750)	45,000	0
I.D.#4(Agricultural)(1d)	6,500	6,000	6,000	0
TOTAL	380,650	342,750	302,500	184,800
SECOND POINT DIVERTERS:				
Buena Vista Water Storage Dist.	75,000	69,000	69,000	69,000
TOTAL	455,650	411,750	371,500	253,800
LOWER RIVER RIGHTS:				
Average Storage 35,000 Acre Feet at 3.5 Acre Feet Per Acre	10,000	10,000	10,000	10,000
TOTAL	465,650	421,750	381,500	263,800

(1) Reflects contracts with City of Bakersfield and various agricultural users. Has Isabella storage right and 2,800 acre spreading capability.

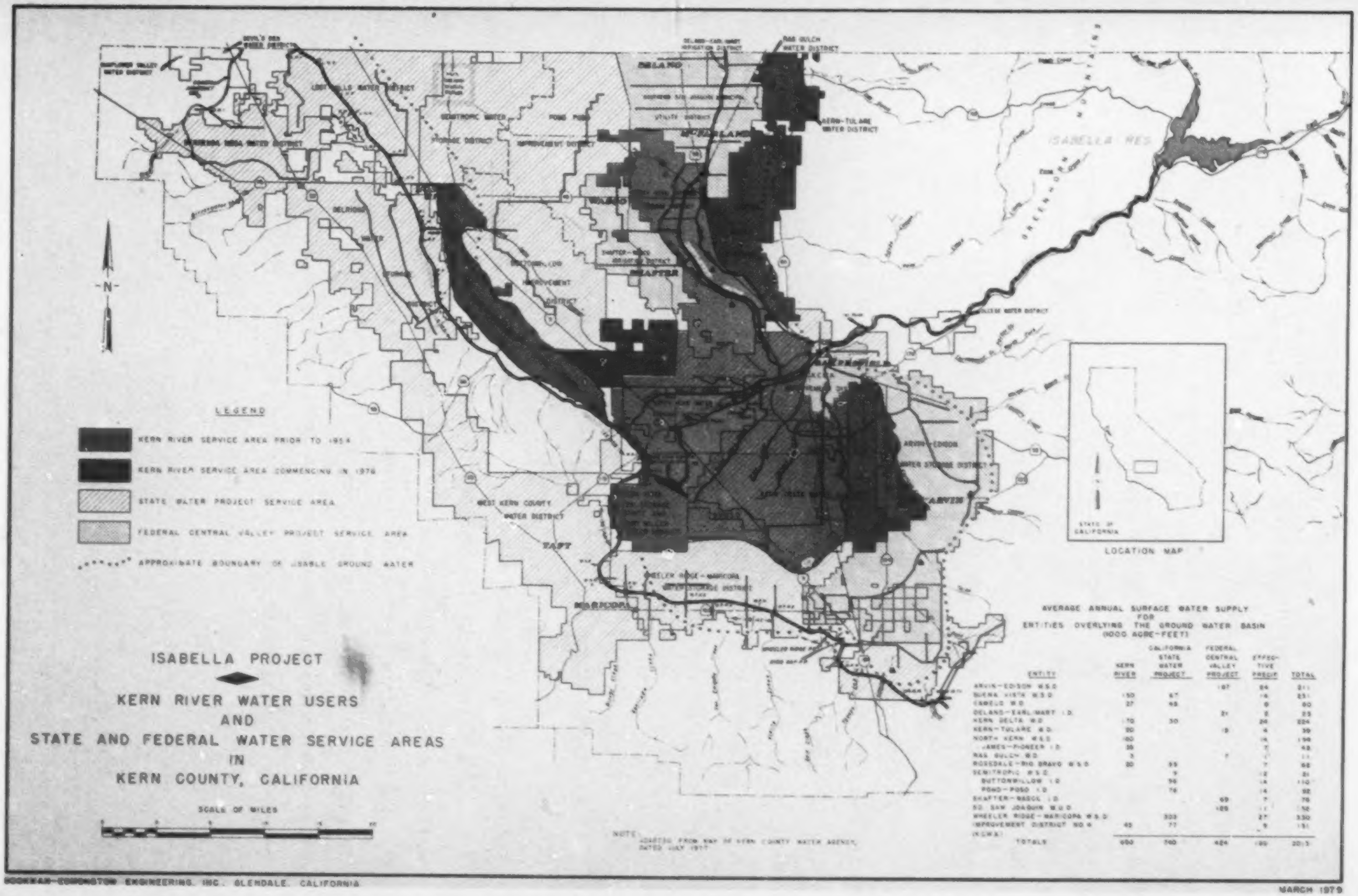
- (a) Agricultural water service available under contract with City of Bakersfield, includes stored water.
- (b) North Kern involved in its own right and under contract with City of Bakersfield. Stored water. 28,000 acres entitled to surface delivery and District wells. 28,000 developed on private pumps. Also has 1,500 acre spreading capability and 50 well recovery facility.
- (c) Contract with City of Bakersfield. No storage. 380 acre spreading capability for groundwater recharge.
- (d) Contract with City of Bakersfield. No storage. Developed on private pumps with surface diversion capability.

(2) Involved in its own right with storage rights under City of Bakersfield. Surface delivery supplemented by private wells.

(3) As reported by District's manager, by canal service areas, acres served.


LOCATION MAP
STATE OF CALIFORNIA
LEGEND
AREAS REPRESENTED BY CONTRACTORS
APPROXIMATE BOUNDARY OF USABLE GROUND WATER
ISABELLA PROJECT
AREAS REPRESENTED BY CONTRACTORS
SCALE OF MILES
FRESNO
K I N G S
TULARE LAKE
TULARE LAKE BASIN WATER STORAGE DISTRICT
HACIENDA WATER DISTRICT
BUENA VISTA WATER STORAGE DISTRICT
NORTH KERN WATER STORAGE DISTRICT
ISABELLA RES
K E R N
STANDARD
PARALLEL
SOUTH

BOOKMAN-EDMONSTON ENGINEERING, INC., GLENDALE, CALIFORNIA
MARCH 1979


LEGEND
KERN RIVER SERVICE AREA PRIOR TO 1954
KERN RIVER SERVICE AREA COMMENCING IN 1976
STATE WATER PROJECT SERVICE AREA
FEDERAL CENTRAL VALLEY PROJECT SERVICE AREA
APPROXIMATE BOUNDARY OF USABLE GROUND WATER
N
ISABELLA RES.
LOCATION MAP
STATE OF CALIFORNIA
DELANO
McFARLAND
WASCO
SHAFTER
TAFT
MARICOPA
ARVIN
RAG GULCH WATER DISTRICT
KERN-TULARE WATER DISTRICT
DELANO-EARLIMART IRRIGATION DISTRICT
WEST KERN COUNTY WATER DISTRICT
WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT
ARVIN-EDISON WATER STORAGE DISTRICT
SEMITROPIC WATER STORAGE DISTRICT
LOST HILLS WATER DISTRICT
SCALE OF MILES
0
5
10
15
20

ISABELLA PROJECT

◆

KERN RIVER WATER USERS AND STATE AND FEDERAL WATER SERVICE AREAS IN KERN COUNTY, CALIFORNIA

AVERAGE ANNUAL SURFACE WATER SUPPLY FOR ENTITIES OVERLYING THE GROUND WATER BASIN (1000 ACRE-FEET)

ENTITY	KERN RIVER	CALIFORNIA STATE WATER PROJECT	FEDERAL CENTRAL VALLEY PROJECT	EFFECTIVE PRECIP	TOTAL
ARVIN-EDISON W.S.D.			187	24	211
BUENA VISTA W.S.D.	150	67		14	231
CAWELO W.D.	27	45		8	80
DELANO-EARLIMART I.D.			21	2	23
KERN DELTA W.D.	170	30		24	224
KERN-TULARE W.D.	20		15	4	39
NORTH KERN W.S.D.	180			14	194
JAMES-PIONEER I.D.	35			7	42
RAG GULCH W.D.	3		7	1	11
ROSEDALE-RIO BRAVO W.S.D.	20	35		7	62
SEMITROPIC W.S.D.		9		12	21
BUTTONWILLOW I.D.		96		14	110
POND-POSO I.D.		78		14	92
SHAFTER-WASCO I.D.			69	7	76
SO. SAN JOAQUIN M.U.D.			125	11	136
WHEELER RIDGE-MARICOPA W.S.D.		303		27	330
IMPROVEMENT DISTRICT NO. 4 (K.C.W.A.)	45	77		9	131
TOTALS	650	740	424	199	2013

NOTE: ADAPTED FROM MAP OF KERN COUNTY WATER AGENCY, DATED JULY 1977

BOOKMAN-EDMONSTON ENGINEERING, INC. GLENDALE, CALIFORNIA

MARCH 1979

STATEMENT OF DEAN AND HELEN HOUSE
Farmer - Landowner

SHOSHONE PROJECT - POWELL, WYOMING
SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
S - 1867
Washington, D.C. - December 5, 1981

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
DEC 21 1981
WASHINGTON, D.C. 20510

Mr. Chairman and Committee Members:

We would like to commend you for offering legislation to update the 1902 Reclamation Act. We hope passage of a bill will be swift.

We agree there need be no residency requirement and support the elimination of limitations after payout. We own land in two districts. One district has recently been paid out and was released from the regulations. The release has not affected any changes in farming patterns.

We believe the acreage limitation should be large enough to allow flexibility, as leasing is an integral part of farming. Also, a fairly large limit allows for future expansion without a need to go through a four-year ordeal of hearings and pushing for a bill when a larger acreage is needed!

We are concerned over TITLE III - Leasing Requirements, Sec. 301. (2) "a certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land." How would this "value" be reached? There is a large variation of soils and individual needs which would set the value on each farm. By whom would the "value" be decided in each individual case? We question the Secretary's need and authority to decide on the amount paid to a landowner for rent. The land is, after all, private property, having being paid for by the owner.

Has a cost analysis been done on this? Would leasing files and certification of the leases be the responsibilities of the local Irrigation Board? It certainly could be a burdensome job, involving much paperwork.

Dean has been on the Shoshone Board for eleven years, and we are concerned over this paragraph and question the need for it.

As an example, we lease land from five landlords. The amount of land involved is less than 300 acres. This gives only a small idea of the paperwork that could be involved in certifying, recording and receiving an "o.k." on just one farmer's leases.

In closing, we ask only that you please keep the bill simple and easy to administer. All the local board members are farmers and cannot approve a bill which would be costly and time-consuming to enforce.

Thank you for your efforts, and the opportunity to comment. Our former comments, made at the Nov. 1977 hearing in Billings, Dean's comments made in Denver, Jan. 1978 and another in the House in Wash. D.C. on March 18, 1980 are on file for more "in depth" comments on Reclamation Limitations and problems with leasing provisions, especially.

Dean & Helen House
#683
Ralston, Wy 82440

cc. Senator Malcolm Wallop
Senator Alan Simpson
Secretary of Interior James Watts
Commissioner of Reclamatin, Broadbent

LABOR'S CENTENNIAL AFL-CIO 1881-1981

American Federation of Labor and
Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

President
Lane Kirkland

Secretary-Treasurer
Thomas R. Donahue

Vice Presidents
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Thomas W. Gleason
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David J. Fitzmaurice
Kenneth T. Blaylock
Alvin E. Heaps
Wm. W. Winpisinger
William H. Wynn
John J. O'Donnell
John DeConcini
Wayne E. Glenn
Robert F. Goss
Daniel V. Maroney
William Konyha
Joyce D. Miller
John J. Sweeney
Douglas A. Fraser

December 11, 1981

Honorable James McClure, Chairman
Committee on Energy and Natural Resources
United States Senate
3104 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

The American Federation of Labor and Congress of Industrial Organizations wishes to express its views in opposition to S. 1867, amending the acreage limitation and residency provisions among other purposes, of the Reclamation Act of 1902, as amended.

The labor-backed 1902 Reclamation Act was designed to foster family sized farms on western lands, to guard against land monopoly, absentee ownership and unwarranted subsidies. In the main, this aim has been achieved in view of the fact that 97 percent of all farms receiving water from federal reclamation projects are in compliance with those major provisions of the Act.

S. 1867, however, is a prodigious welfare scheme for the three percent of giant agribusiness and corporate absentee owners of excess land located principally on reclamation projects in California's Central Valley. At a time when 8.4% of America's workers are unemployed, when this Administration is systematically and drastically reducing its program to help needy individuals, this bill weaves a safety net for another class of needy entities. Among others, these consist of the Southern Pacific Railroad, Tenneco West, J. G. Boswell, the world's largest cotton grower, and the Chevron and Getty oil companies. Their holdings in excess of the Reclamation Act's acreage restriction provisions total between 800,000 and 1 million acres of some of the most fertile and valuable land in the nation, located principally in California's Central Valley.

It is quite true that federal reclamation projects are subsidized by the American taxpayer. Their initial purpose was to attract farmers from other areas to the American West, to populate it and make it grow. They were never intended to benefit huge agribusinesses, corporations and absentee owners who hold land which can be made productive only by deliveries of water from projects built and operated at public expense.

S. 1867, however, is intended to subvert the intent of the 1902 Act. It would legitimize decades of unlawful land grabs and receipt of illegal subsidies.

First, it wipes out the residency requirement, and does not contain a meaningful proprietorship test. This will result in further land speculation, also contrary to the intent of the Act, and investor-absentee ownership, further inflating land prices and squeezing out family farmers. Because of the lack of enforcement of residency requirements, there are on record purchases by such "dirt farmers" as a New York law firm, a company in the Netherlands Antilles, a Japanese investment conglomerate, and a false tooth by mail corporation.

Second, S. 1867 exempts the Kings River-Tulare Lake service area which receives water from projects built by the U.S. Army Corps of Engineers under the Flood Control Act of 1944, and providing for application of the Reclamation Act to such projects located only in the 17 western states and limited to irrigation uses of their water. Since the 1944 law was debated in the Congress in 1944 and despite legislative history, presidential declarations, and conclusive court actions sustaining the applicability of reclamation laws, there is still about 44% of the land in these projects owned in excess, but receiving illegal benefits of several million dollars a year for more than 25 years. S. 1867 would sanction this record of flouting the law by exempting Kings River-Tulare Lake from coverage by reclamation law. Since the Kings-Kern projects contain 82% of all irrigable acres and 97 percent of all excess lands in projects built by the Corps under the 1944 Flood Control Act, it is obvious that the legislation is aimed at the relief of a handful of giant corporations at the expense of the taxpayer and will further strengthen their monopoly of the land.

This legislation further repeals the goals of reclamation law by permitting almost unlimited leasing of land within irrigation projects. It defines water charges to beneficiaries of federally constructed reclamation projects in such a way as to enable excess landowners to escape repayment of charges which should properly be their responsibility. It allows deliveries of project water to acreages that can aggregate 3,200 acres - 10 times the limits imposed by the present Act.

The provision allowing buying out of the acreage limitation provisions by lump sum payments representing "full cost" for water delivered in excess of the limitation, appears to take care of the subsidy issue. It fails, however, to remove the subsidy for the few wealthy corporations that could use it, and likewise forecloses the opportunity for small, family farm operations to spring up on lands which the excess holder should be forced to divest.

There are other basic flaws in S. 1867, but the ones we have set forth should be sufficient for rejection of this legislation which benefits only a few large landowners and perpetuates subsidies contrary to the social purposes of the Act, at taxpayer expense. It deprives potential farmers of an opportunity which was stated in 1902 as the basic principle of the Act -- to hold the land in small tracts and provide each owner with only an amount of land necessary to support a family.

We urge that S. 1867 be rejected by your subcommittee.

Sincerely,

Ray Denison

Ray Denison, Director
DEPARTMENT OF LEGISLATION

c: Members of Senate Committee on
Energy and Natural Resources

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*A PROFESSIONAL CORPORATION

AREA CODE (805)
TELEPHONE 327-9661

OF COUNSEL:
JOHN B. YOUNG

ROBERT D. GARDNER
ADMINISTRATIVE ASSISTANT

December 8, 1981

The Honorable James A. McClure
Energy and Natural Resources Committee
U. S. Senate
Washington, D.C.

Dear Senator McClure:

Enclosed herewith is a copy of the Statement of the Arvin-Edison Water Storage District, Kern County, California on modernization of reclamation law, together with an enclosure recommending an amendment dealing with commingling, which we request be included in the record on the hearings on S.1867, December, 1981.

The matters set forth in the Statement reflect the problems raised by acreage limitation and related laws and support for the more reasonable solutions provided in S.1867. The amendment proposes a new subsection (h) to section 106.

We greatly appreciate your consideration of this material.

Very truly yours,

A C Paulden

A. C. PAULDEN

ACP:dp
enclosure

STATEMENT OF DAVID L. MOORE
BEFORE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
WASHINGTON, D. C.
SENATOR JAMES A. MCCLURE, CHAIRMAN
DECEMBER 10, 1981

GENTLEMEN:

MY NAME IS DAVID L. MOORE. I SERVE ON THE BOARD OF DIRECTORS OF WESTERN GROWERS ASSOCIATION, THE FARM WATER ALLIANCE AND AS PRESIDENT OF THE ARVIN-EDISON WATER STORAGE DISTRICT, WHICH ENCOMPASSES 132,000 ACRES OF HIGHLY DIVERSIFIED AGRICULTURE IN THE SOUTHEASTERN PORTION OF THE SAN JOAQUIN VALLEY. I PRESENTLY FARM WITH MY OLDEST SON AND HOPE TO INCLUDE MY TWO YOUNGER SONS IN THE FAMILY FARM AT SOME FUTURE TIME.

WE ARE IN GENERAL AGREEMENT WITH SENATE BILL S.1867 IN ITS PRESENT FORM AND COMMEND THE COMMITTEE FOR ITS EFFORTS IN PROVIDING A MEANS BY WHICH, UNDER TITLE I, THOSE ENTITIES WHICH WISH TO DO SO MAY CONTINUE TO FUNCTION ESSENTIALLY AS THEY HAVE IN THE PAST, AND A MEANS BY WHICH ENTITIES THAT WISH TO ALTER THEIR PROCEDURES MAY OPERATE UNDER TITLES II AND III.

IRRIGATED AGRICULTURE BEGAN IN OUR AREA AROUND 1900. THE ARVIN-EDISON WATER STORAGE DISTRICT WAS FORMED IN THE EARLY 1940'S WHEN IT BECAME APPARENT THAT AN IMPORTED WATER SUPPLY WOULD BE REQUIRED TO OVERCOME THE SUBSTANTIAL GROUND WATER OVERDRAFT THAT WAS OCCURRING. BY 1967, THE DISTRICT HAD ACQUIRED WATER SERVICE AND P. L. 130 LOAN CONTRACTS WITH THE UNITED STATES AND COMPLETED THE CONSTRUCTION OF A WATER DISTRIBUTION SYSTEM. AT THAT TIME THE DISTRICT ENTERED INTO WATER SERVICE CONTRACTS WITH OWNERS OF 52,000 ACRES OF DISTRICT LANDS.

AMONG THOSE LANDS WERE SOME 11,265 ACRES OF EXCESS LANDS, THE OWNERS OF WHICH, ABIDING BY THE LETTER OF THE LAW AND GOOD FAITH, EXECUTED RECORDABLE CONTRACTS. DURING THE PERIOD 1967 THROUGH 1977, THE OWNERS OF ABOUT SIX THOUSAND ACRES OF THIS TOTAL SOLD THEIR LAND INTO ELIGIBLE

STATUS. IN ABOUT 1977, WHEN THE RECORDABLE CONTRACTS ON THE REMAINING 5,300 ACRES BEGAN MATURING, THE BUREAU OF RECLAMATION IMPOSED A MORATORIUM ON THE SALE OF ALL EXCESS LAND. THE OWNERS OF THESE LANDS UNDER RECORDABLE CONTRACT, MANY OF WHOM ARE OLDER AND WISH TO RETIRE AND SELL THEIR PROPERTY, WILL, UNDER TITLE I, BE ABLE TO COMPLETE THEIR TRANSACTIONS AND THE LANDS WILL CONTINUE TO BE FARMED CONSISTANT WITH RECLAMATION LAW.

WE BELIEVE THAT LEGISLATION SHOULD PROVIDE CLEAR AUTHORIZATION THAT PROJECTS MAY CONTINUE TO BE ADMINISTERED AS THEY HAVE BEEN HISTORICALLY. IN ADDITION TO THE REPEAL OF RESIDENCE AND A PROVISION FOR UNLIMITED LEASING, THE LEGISLATION SHOULD CLARIFY THAT RECLAMATION LAW IS TO BE ADMINISTERED ON A DISTRICT BY DISTRICT BASIS WITHOUT DISCRIMINATION PERTAINING TO LEGALLY FORMED ENTITIES, INCLUDING CORPORATE LANDOWNERS.

WHATEVER FORM THE LAW FINALLY TAKES, IT IS HOPED THAT THE RULES ARE WRITTEN IN A CONCISE AND CLEAR MANNER SO THAT THEY ARE NOT SUBJECT TO INTERPRETATION AND CHANGE BY FUTURE ADMINISTRATIONS AS HAS OCCURRED IN THE PAST.

THANK YOU FOR GIVING ME THE OPPORTUNITY OF SUBMITTING A STATEMENT TO YOUR COMMITTEE.

- -

DAVID L. MOORE   P. O. BOX 698   ARVIN, CALIFORNIA 93203

ARVIN-EDISON WATER STORAGE DISTRICT

20401 BEAR MOUNTAIN BOULEVARD
MAILING ADDRESS: P. O. BOX 175
ARVIN, CALIFORNIA 93203

TELEPHONE: (805) 854-5573

PRESIDENT
DAVID L. MOORE
VICE PRESIDENT
SAL GIUMARRA
SECRETARY
JOHN W. SLIKKER
TREASURER
DUNCAN V. PATTY
ENGINEER-MANAGER
C. E. TROTTER
ASSISTANT SEC.-TREAS
ALEX W. OTTEN
ATTORNEY
A. CAMERON PAULDEN

DIRECTORS
DIVISION 1
JOHN W. SLIKKER
DIVISION 2
SAL GIUMARRA
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HOWARD R. FRICK
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DIVISION 5
DAVID L. MOORE
DIVISION 6
ARNOLD T. CATTANI JR
DIVISION 7
JOSEPH E. KURTZ
DIVISION 8
JOHN VALPREDO
DIVISION 9
DUNCAN V. PATTY

FILE NO.

TO: Board of Directors

FROM: A. C. Paulden

DATE: December 5, 1981

RE: S. 1867 (McClure) and H.R. 1465 (Lujan)

The administration of Reclamation law would be improved if nonproject water could be commingled with project water for purposes of transportation through Federally constructed or financed facilities without acreage or other excess land law provisions applying to the nonproject water under safeguards assuring that the Federal water and facility were used for Federal project purpose.

Such a provision would permit a better use of our water resources, including protection of endangered aquifers, and minimize the utilization of power.

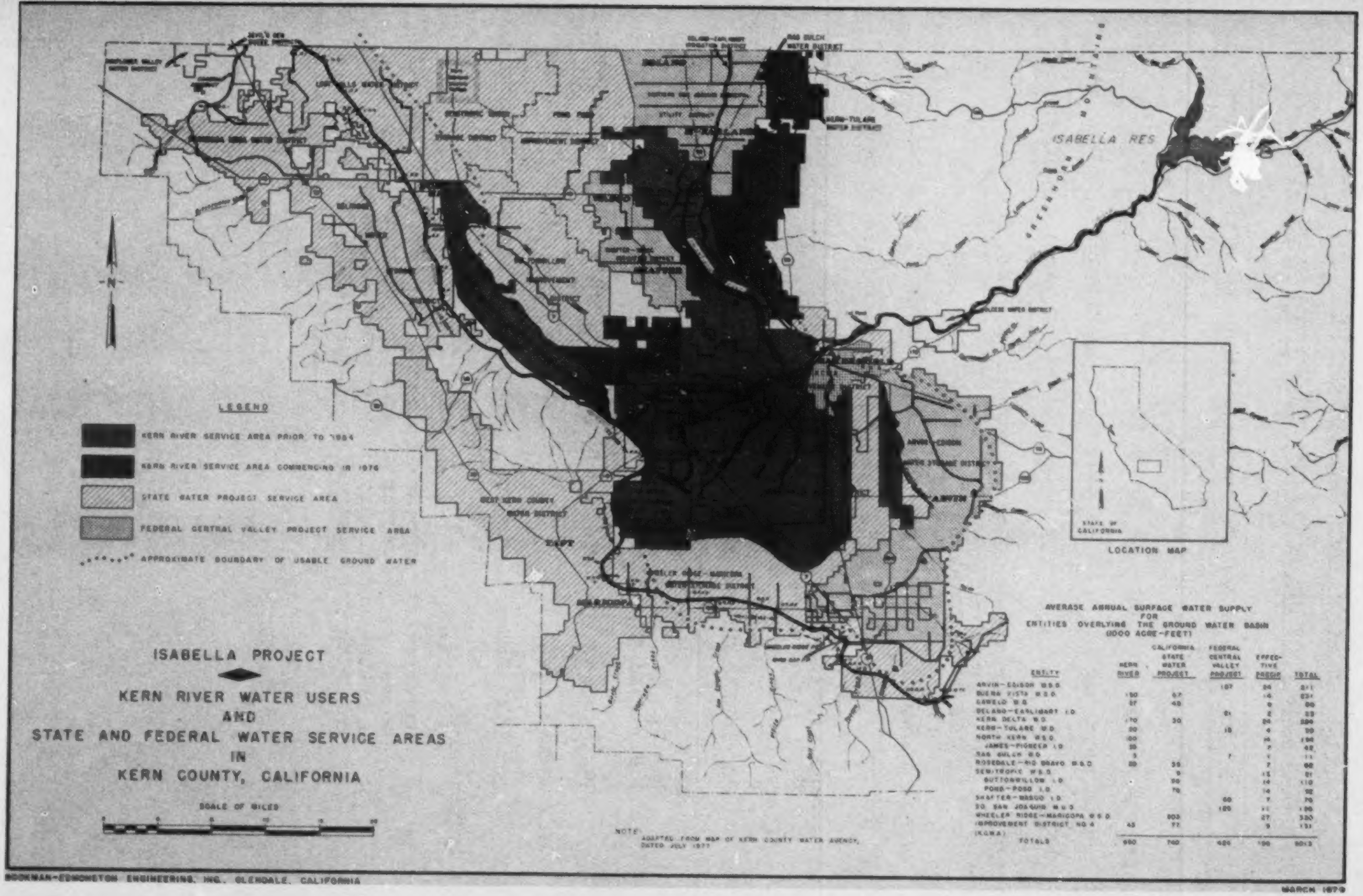
An illustration of need is the Intake Canal of the Arvin-Edison system, constructed as a PL 130 finance facility, which can be utilized to transport surplus water from the State project or the Kern River when available for use in the Kern Delta area and possibly through exchange to other areas. The attached map shows the area and the above-mentioned facility.

Suggested language to achieve this purpose follows - add a new sub-article to section 106 to become (h) and read:

> "(h) Irrigated with nonproject water which has been commingled with project water in project works so long as such commingling does not interfere with conveyance of project water, requires no increase in capacity of project works, and causes no increase in cost to the United States."

This language has been discussed with Gordon Nelson of the Farm Water Alliance, Ken Manock of the Alliance Drafting Committee and, it is my understanding, with certain interests in Washington State who are similarly interested commingling and project water concept. Additionally, the language has been discussed with Maurice Langley of Bookman-Edmonston Engineering our Consulting Engineers. I propose to put this language before the Alliance Drafting Committee at its meeting in Washington on December 7th. At the present time I have received no objection to the proposal and have received favorable comment.

It is recognized that this would be a modification of section 2 of the Warren Act which in my opinion should be updated along with many other provisions of Reclamation law. Application of this provision as written by limiting flexibilty of use of facility encourages waste of our resources.


ISABELLA RES
GREENHORN MOUNTAINS
RAG GULCH WATER DISTRICT
KERN-TULARE WATER DISTRICT
DEVIL'S DEN WATER DISTRICT
WEST KERN COUNTY WATER DISTRICT
TAFT
ARVIN
WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT
MARICOPA
N
LOCATION MAP
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▇ KERN RIVER SERVICE AREA PRIOR TO 1964
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ISABELLA PROJECT

◆

KERN RIVER WATER USERS
AND
STATE AND FEDERAL WATER SERVICE AREAS
IN
KERN COUNTY, CALIFORNIA

AVERAGE ANNUAL SURFACE WATER SUPPLY
FOR
ENTITIES OVERLYING THE GROUND WATER BASIN
(1000 ACRE-FEET)

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RAG GULCH W.D.	3		7	1	11
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SEMITROPIC W.S.D.		9		12	21
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SO. SAN JOAQUIN M.U.D.			185	11	196
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IMPROVEMENT DISTRICT NO. 4 (K.C.W.A.)	45	77		9	131
TOTALS	660	740	426	196	2013

NOTE: ADAPTED FROM MAP OF KERN COUNTY WATER AGENCY, DATED JULY 1977

BOOKMAN-EDMONSTON ENGINEERING, INC., GLENDALE, CALIFORNIA

MARCH 1979

WELFARE SERVICES PROGRAM OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

It has always been a cardinal teaching with members of the Church of Jesus Christ of Latter-day Saints that a religion that has not the power to save people temporally cannot be depended upon to save them spiritually. The prophets and seers of all ages have been champions of the poor and helpless. The Church cannot be less.

The Welfare Services Program of the Church had its formal inception in the economic depression of the thirties. However, in principle, the plan is not new among a people who have always believed that whatever pertains to human welfare is the rightful concern of the Church.

While the Church has always cared for the needy, the inroads of unemployment during the depression demanded more than the existing machinery of assistance. The Welfare Services Program was instituted in the 1930's to help people help themselves.

In 1936 Heber J. Grant, former president of the Church, indicated:

> Our primary purpose of the Welfare program was to set up, "insofar as it might be possible, a system under which the curse of idleness would be done away with, the evils of the dole

> abolished, and independence, industry, thrift, and self-respect be once more established amongst our people. The aim of the Church is to help people to help themselves. Work is to be re-enthroned as the ruling principle of the lives of our Church membership." (Conference Report, October 1936, Page 3)

The Welfare Program is designed to care for the needy and to enable individuals and families to take care of their own physical, economic, emotional, educational and spiritual well-being. It is considered by and administered by the Church as a religious program. The Welfare Services Program is a means of furthering the religious admonition in the second great commandment, "Thou shalt love thy neighbor as thyself" (Matthew 19:19) and of providing an opportunity for people to serve the poor, needy, sick and afflicted. We believe that this activity should supercede government welfare assistance insofar as possible and we strongly discourage members of the Church from accepting unearned government payments.

PRODUCTION PROJECTS

As a key part of the Welfare Services Program, various projects are undertaken throughout the Church to produce and preserve foodstuffs and to manufacture clothing and other needed items. These production and processing projects include such activities as farms, ranches, canneries, mills, and plants to produce soap, milk, cheese, pasta, clothing, and bedding. The organization through which the Welfare

Services Program operates is exempt from Federal taxation under § 501 (C) (3) of the Internal Revenue Code.

The objectives of welfare production projects are four-fold:

1. To provide food and non-food commodites to the poor and the needy.

2. To secure the long-term capability to respond to large scale commodity needs which may arise from social or natural disturbances.

3. To provide the means whereby recipients of assistance may maintain dignity and self-respect by working to the extent of their ability for the assistance they receive.

4. To give members of the Church an opportunity to share part of their abundance with others by generously contributing resources and labor, thereby, becoming directly involved in the charitable relief of their fellowman.

For example, if a Welfare Production Project were a dairy farm, a three-fold benefit might result: (1) milk would be produced to be distributed to the needy, (2) a person who received assistance would be permitted to maintain a sense of dignity and self-respect by working on the project, and (3) many other members of the Church would have the opportunity to work on the project, as volunteers, and thereby make a meaningful contribution toward the charitable assistance of others.

Local congregations of the Church are encouraged to acquire, maintain and operate production projects (farms) which are suitable to their own area and which are compatible with other local projects. For example, a local ward or congregation which operates a dairy farm for their welfare project could be supplied with hay, corn silage, or soybeans to feed their cattle, from a nearby ward production project, or, another congregation may be asked to raise potatoes, tomatoes or other row crops for the purpose of having them processed or preserved by a neighboring congregation welfare cannery.

Presently there are approximately 800 welfare projects in the United States producing, processing, storing and distributing 120 different commodites (primarily foodstuffs) to the needy.

Production projects used to produce agricultural commodities are known as welfare farms. These farms are an integral part of the Church's Welfare Services Program. Without such farms the program could not operate. Many of the Church congregations are located in the arid regions of the 17 western states. Irrigation water is obviously critical to operate our farms. To the extent possible we seek private water for these welfare farms, but in many locations the federal government controls all irrigation water. Of necessity, a number of these farms are presently receiving Bureau of Reclamation water. In 1978, the number of acres of Church-owned land receiving Bureau water was estimated at 16,481 acres or 0.1 percent of the total land receiving Bureau water.[1] This is clearly a deminimus amount in relationship to all land receiving Bureau water.

As with all welfare production projects, the welfare farms are purchased with funds freely contributed by members of the Church. These donations are also used to pay for capital improvements and cover all administrative overhead associated with the welfare projects at headquarters and at the local congregation level. Welfare projects do have open market sales. These sales are necessary to produce some income to pay for operating expenses such as seed, fertilizer, repairs, utilities, etc.

The purpose of welfare projects is not only to supply commodities but also to provide work opportunities. Welfare farms are operated primarily with donated management and labor. In 1980 over 4,148,000 hours of labor were donated in the Church's Welfare Services Program. Some farm operations do require paid labor in order to carry out critical farm operations such as milking cows and scheduling, supervising, and training volunteers in such jobs as planting, irrigating, fertilizing, spraying, pruning and harvesting. These tasks could not be left solely to untrained volunteers without jeopardizing the health and safety of both welfare recipients and volunteers who practice their religious beliefs by rendering charitable service. Less than 10 percent of the welfare farms receiving Bureau water employ full-time farm managers.

The majority of commodites which are distributed to the poor and needy through the Welfare Services Program are produced within the Church welfare system. However, economies of scale necessitate that some commodities such as textiles, light bulbs, salt, pepper, etc. be purchased on the open market. In order to purchase needed commodities, it is necessary that welfare farms produce some income through the sale of farm commodities.

Currently, the Church cares for in excess of 160,000 needy individuals. In 1980, the value of assistance from the Church to the needy exceeded $44,737,000. This is a 95% increase over assistance rendered in 1978. Of the total amount of assistance in 1980, $27,110,000 came directly from cash donations from church members. The remainder, $17,627,000 worth of commodities distributed directly to the needy, was derived from welfare production projects.

After supplying local needs, surpluses from production projects are sent to regional and central storehouses which are known as bishops storehouses. Today, there are over 70 bishops regional storehouses in the United States.[2] A system of exchange between these storehouses provides that each storehouse is stocked with commodites from various areas of the nation. For example, a storehouse may receive wheat from Montana, soybeans from Iowa, corn from Illinois, milk from Maryland, peanut butter from Texas, honey from Florida, grapefruit from Arizona, potatoes from Idaho, fruits and nuts from California, poultry products from Utah, beef from Nevada and from far and near, soap, orange juice, gelatin, toothpaste, etc.

Bishops who authorize welfare assistance, as referred to hereinafter, will draw upon the storehouse commodity inventories of food, clothing, and other dry goods to meet the basic needs of the poor. It is to these regional storehouses that the needy go to receive assistance.

Where bishops storehouses are not available to distribute commodites produced in the welfare program, arrangements are made with local merchants to provide commodities to the needy. These commodities are paid for with the dedicated funds referred to above, supplemented by donations of members of the Church.

In addition to the basic food and non-food commodities which persons in need receive from bishops storehouses, needy individuals or families often require cash to help meet such obligations as rent, utilities and medical expenses. In order to have the wherewithal to meet these needs, the Church encourages each member of the Church to abstain from eating at least two meals each month and to donate the cash equivalent to the Church for the care of the poor and the needy. These cash contributions are known as fast offerings. Cash assistance, as outlined here, is kept to a minimum. The Church places great emphasis on "commodity assistance" whereby food and clothing are supplied to needy individuals and families.

The local ecclesiastical leader of the Church, known as a Bishop, is charged with the primary responsibility of seeking out the poor and needy and administering to their relief. These Bishops are lay members of the Church and serve without any monetary remuneration. As of 1980, over six thousand Bishops of the Church in the United States were spending substantial time caring for those in need of welfare assistance. These needy individuals are those who are incapable of providing their own basic welfare needs, including, but not limited to, food, clothing, and shelter, whether as a result of economic downturns, natural disasters such as floods or earthquakes, or personal reasons such as illness or injury. Whatever the cause of need, the Church seeks to mitigate its affect on the individual and family. The Church then seeks to restore the individual to a productive, self-sufficient role in society at the earliest possible date. The main thrusts are rehabilitation and work opportunities for assistance received.

In many ways, the Bishop is an ecclesiastical "case worker" who is seeking out those in need. The Bishop meets their needs through Church-related welfare assistance, and develops, in conjunction with the recipient, a work and self-help program that will rehabilitate and restore him as a productive member of society. During 1980 the church volunteer job placement program assisted over 26,382 persons to find gainful employment with numerous employers throughout the country.

Working closely with the Bishop in his responsibilities to the poor is the president of the Relief Society, which is the women's organization in each local Church congregation. In addition to assisting needy families emotionally and spiritually, the Relief Society President determines the physical needs of the family. When the Bishop has determined that a family or individual needs commodity assistance, the Relief Society President, in conjunction with the family or individual in need, prepares a voucher known as a "Bishops Order." With this order, an individual or family in need may go to a bishops storehouse and there receive assistance. In the storehouse there are no cash transactions. Assistance is received pursuant only to a bishops order.

The same religious teaching that prompts the Welfare Services Program directs individuals and families to strive diligently to meet their own needs. If it becomes necessary for them to receive welfare assistance, they are encouraged to turn to the Church for assistance, not the government. If an individual or family is receiving government assistance when they come to the Church for assistance, they are expected to forego any governmental assistance when they come under the Church program. Therefore, the welfare load of governments is greatly reduced by the Church's Welfare Services Program.

Not only is the Welfare program designed to provide for the ongoing needs of the poor and the needy, it is also called upon to provide needed assistance in times of emergency or national disaster. Examples of Church assistance in emergency situations include assistance rendered in the Teton Idaho flood, Guatemalan earthquake, Rapid City, South Dakota flood, Los Angeles earthquake, Alaskan earthquake, Peruvian earthquake and flood and the Chilean earthquake.

CONCLUSION

Problems associated with caring for the poor and needy have challenged both government and private enterprise for generations. Both federal and state governments have long recognized that private charities relieve the government of many of its burdens by performing functions and services that the government would otherwise be required to undertake. Accordingly, both the federal and state governments have enacted laws for the express purposes of encouraging private charities and charitable giving.

In the present economic climate, government welfare rolls are expanding while resources available to meet these needs are being critically scrutinized and cut back. Never in history has there been a need for more creative concern than today. The Welfare Services Program of the Church of Jesus Christ of Latter-day Saints has dedicated itself to a creative and effective approach of meeting these needs.

It is effectively discharging a public obligation and lightening the public burden.

The Church is not asking for a governmental subsidy or financial assistance. Quite the contrary, the Church is asking merely to be allowed to fulfill its religious mandate to serve the poor, needy, sick and afflicted.

Accordingly, the Church of Jesus Christ of Latter-day Saints requests that bona fide religious or charitable organizations be exempt from acreage limitation provisions of Federal Reclamation Law so long as agricultural produce or proceeds of sales are directly used for charitable purposes.

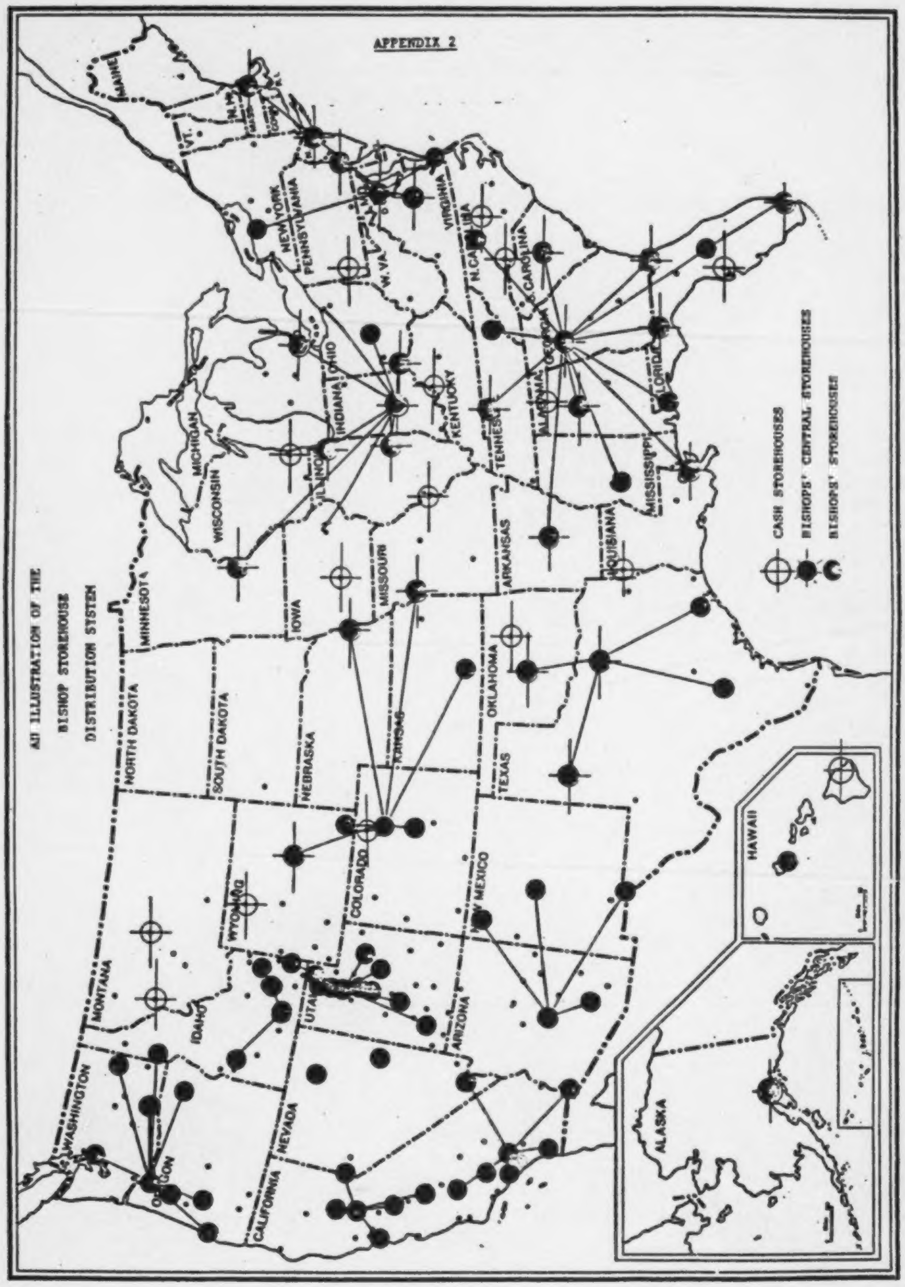
APPENDIX 1

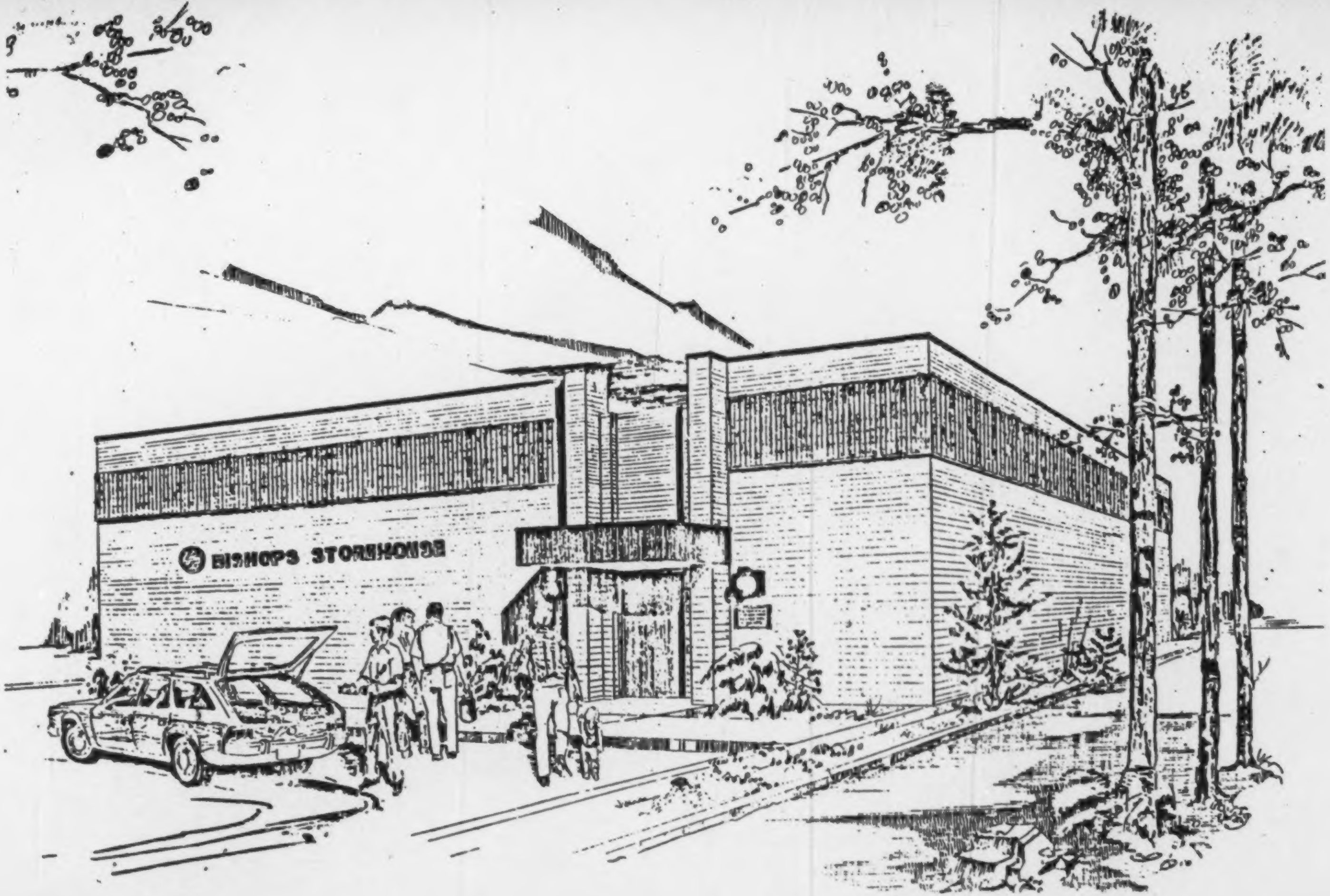
WELFARE FARM ACREAGE IRRIGATED UNDER BUREAU OF RECLAMATION

STATE	ACREAGE
ARIZONA	2,748
CALIFORNIA	746
COLORADO	0
IDAHO	3,596
KANSAS	0
MONTANA	329
NEBRASKA	0
NEVADA	18
NEW MEXICO	0
OKLAHOMA	0
OREGON	414
TEXAS	0
UTAH	8,230
WASHINGTON	345
WYOMING	55
TOTAL	16,481

APPENDIX 2

AN ILLUSTRATION OF THE BISHOP STOREHOUSE DISTRIBUTION SYSTEM


CASH STOREHOUSES
BISHOPS' CENTRAL STOREHOUSES
BISHOPS' STOREHOUSES
MAINE
VT.
N.H.
MASS.
CONN.
R.I.
NEW YORK
PENNSYLVANIA
MD.
W.VA.
VIRGINIA
N.CAROLINA
S.CAROLINA
GEORGIA
FLORIDA
ALABAMA
MISSISSIPPI
LOUISIANA
TENNESSEE
KENTUCKY
OHIO
INDIANA
ILLINOIS
MICHIGAN
WISCONSIN
MINNESOTA
IOWA
MISSOURI
ARKANSAS
OKLAHOMA
TEXAS
KANSAS
NEBRASKA
SOUTH DAKOTA
NORTH DAKOTA
MONTANA
WYOMING
COLORADO
NEW MEXICO
ARIZONA
UTAH
NEVADA
IDAHO
WASHINGTON
OREGON
CALIFORNIA
HAWAII
ALASKA


BISHOPS STOREHOUSE

Statement of Rose McCullough
SIERRA CLUB
Senate Energy Committee
December 9-10, 1981

Reclamation Law

My name is Rose McCullough. I am honored to represent Sierra Club's over 270,000 members to discuss Reclamation Law, in the semi-arid western states. I live in Nebraska and work in the Northern Great Plains (Nebraska, North Dakota, South Dakota, Montana, and Wyoming).

I would like to discuss two aspects of Reclamation Law today:

(1) The history of Reclamation and its accomplishmenta and its costs, including who has paid the costs of reclamation.

(2) A cost recovery and conservation program for reclamation projects that will benefit the economy of our nation and our environment.

Historian Walter Prescott Webb tells us, "If we do not understand the West it is because we perversely refuse to recognize this fact...when the desert pokes its finger into the border regions, the people speak of a drought; when it pulls the finger back, they say the country is getting more seasonable. At the heart of the desert there is no drought, there is only an occasional mitigation of dryness."

A century ago John Wesley Powell explored the southwest and wrote a Report on the Land of the Arid Region of the United States. He took on the Chamber of Commerce, railroads, and land speculators, who portrayed the West as a potential garden spot, by emphasizing the natural limits of the arid West's water resources and its land.

> There remain vast areas of valuable pasture land bearing nutritious, but scanty grass. Within the Arid Region, only a small portion of the country is irrigable. The irrigable tracts are lowlands lying along the streams.
>
> The limits of successful agriculture without irrigation has been set at 20 inches (annual rainfall)... Many droughts will occur, many seasons in a long series will be fruitless; and it may be doubted whether dryland agriculture will prove remunerative. These lands will maintain but a scanty population."

In 1893 Powell told the International Irrigation Congress "...you gentlemen are piling up a heritage of conflict and litigation over water rights, for there is not sufficient water to supply the land."

The Bureau of Reclamation has since 1902 constructed 325 reservoirs, 345 dams and nearly 15,000 miles of canals. More than 11 million acres are irrigatd for 146,000 landowners and the reclaimed land produces about $5 billion in crops annually, roughly 8% of the American harvest.

In 1977 the agricultural output of the arid West, $16.6 billion, was 18% of the nation's total agricultural output, including 21% of our wheat, 39% of our barley, and 66% of our cotton. The population of the West has grown faster than the nation as a whole. Was Powell wrong? Clearly the West has more population and produces more crops than he envisioned 100 years ago. Has the West found some magic solution to its fundamental deficiency - water?

Unfortunately not - the price of a large and rapidly expanding population and vast agricultural production in the West includes:

- The depletion of groundwater - pumping more water than is put back on the average from natural recharge.
- Damming the region's rivers and streams to make water available on demand.
- Transporting water long distances from where it is abundant to where it is scarce.
- Salinization of once fertile land by irrigation water.

Billions of dollars have been spent on programs with contradictory goals, and problems without economic solutions such as salinization have been created. These programs, impressive as they are, have not solved the West's essential deficiency - its scanty supply of water. In some ways they have exacerbated the situation; the West has been developed beyond its capacity to sustain the developments that have occurred. The increasing population and the irrigated agriculture that are the pride of those who promote more development of water in the West may not be sustainable at a price we can afford, especially without real cost recovery - not the cost recovery provided for in H.R. 4265.

Under President Reagan's leadership the Congress has initiated a painful budget cutting process - one in which favorite programs of each and every interest have been deeply cut. Conservationists are far from pleased with some of the cuts that have been made; many programs we have worked to create are being eliminated or reduced. But as these drastic reductions are made, we suggest that the water development programs in the West must come under the closest of economic scrutiny and must finally be required to pay the Treasury their real full cost.

Under the present western water development system, a few select individuals have profited immensely, while the public has bankrolled water development without it serving a clear public purpose or providing a public benefit.

The price that we pay for unsound water development - salinization of much fertile land, destruction of riparian ecosystems, subsidence of land where aquifers have been overdrafted - is at least partly because benefits of that development are given free or well below market value to a chosen few. If the beneficiaries of the reclamation prjects had been required over the years to pay for those projects, the choices about which to build and which to forego would have been more careful and many of their adverse affects would have been avoided. When we provide water for irrigation at a highly subsidized price, we create a powerful disincentive to apply proper conservation methods, and we create an inflated demand for more cheap water - the environment be damned.

Certainly the history of water development in the West has provided ample lesson that the system of providing cheap water on demand is in reality too costly - in economic terms and to the fragile environment of the semi-arid West. The time is here - long overdue - to change the system - both to benefit taxpayers and to protect the West from the adverse effects of development beyond its capacity to sustain that development.

The changes we propose are simple:

(1) Recovery of the real full cost of any water development project including interest at the prevailing market level from those benefitted by the project - those who receive the water.

(2) An effective water conservation program by all users of reclamation water.

Demands for water can be satisfied in a variety of ways including more efficient use of existing supplies and reduction of the demand, as well as the traditional solution to increase available supplies with impoundments or transfers. The more efficient use of water and reduction in demand are the most osr effective solutions in the semi-arid West.

Mr. Chairman, it is interesting that California alone - of the 17 reclamation states - is allowed to include operation and maintenance costs as part of the cost of service in water contracts. These contracts can run for 40 years and it is possible - even likely - that the O&M costs will exceed the contracted price of water during the life of the contract. In every state from Texas to the Dakotas and west, except California, irrigators must pay the full cost of operation and maintenance (O&M), whatever it may be. While we believe that water users should indeed pay the O&M plus repay construction costs with interest, the inequity between California and the other 16 western sates is a good example of the favored treatment in the reclamation program itself - specific priveleges are given to a few without regard to whom the costs accrue. In some cases in California there are contracts that will remain in effect for several years with the cost of water at only a few dollars per acre foot. With soaring energy costs, it is reasonable to assume that these reclamation beneficiaries are not even beginning to pay their actual operation and maintenance costs.

A recent Government Accounting Office (GAO) report on six proposed federal reclamation projects found that the cost to the government of delivering water is between $54. and $130. per acre-foot each year but crops grown by irrigators do not yield enough revenue to cover that cost. Of course. farmers are happy to buy the federal water because they get it below its actual cost and someone else - the taxpayer and sometimes electric ratepayers using power produced at federal hydroelectric projects - pays the difference.

The same GAO report concluded that repayment by irrigators is less than 10% of the federal government's actual cost. These partial repayments are, however, represented to the Congress as full repayment; but because the irrigators do not pay interest the actual amount recovered by the federal treasury is small - sometimes only 3 cents for each dollar spent.

If water development programs are going to proceed, the Congress - indeed this Committee needs to study carefully reclamation law and not hastily move this ill conceived bill. We recommend that oversight of the reclamation program occur and real 100% cost recovery be instituted for the federal reclamation program.

We believe that H.R. 4265 is a social welfare program for a few California growers. It certainly does not provide cost recovery; it repeals residency; it exempts Corps projects in California from the law; indeed it effectively repeals reclamation law. We can support a water pricing bill such as H.R. 2606 if it is amended to include a realistic interest rate.

AVONDALE IRRIGATION DISTRICT
P. O. BOX 81
HAYDEN LAKE, IDAHO 83835

HOURS
TUES. & WED. 9 A. M. - 4 P. M.
FRI. 12 P. M. - 6 P. M.

January 8, 1982

The Honorable James McClure
United States Senate
Washington, D.C.

Dear Sir:

The Avondale Irrigation District Board of Directors wish to inform you that they are in favorof and support S. 1867, to amend and supplement the acreage limitation and residency provisions of the Federal reclamation law, as amended and supplemented, and for other purposes.

Very truly yours,

Ronald B. McIntire

Ronald B. McIntire
Chairman

RBM/ra
cc:

B&T
TWIN FALLS BANK AND TRUST COMPANY
102 Main Avenue South
Twin Falls, Idaho 83301
Telephone 208 733-1722

January 8, 1982

Mr. Berne Jensen
Executive Vice President
Idaho Bankers Association
P. O. Box 638
Boise, Idaho 83707

Dear Berne:

Herewith enclosed is the testimony presented by the Bankers Association at the field hearing in Boise, 21, November, 1977.

Although the statistical data is out of date, the conclusions drawn in the written presentation still apply and can be easily updated. As I understand, at this point, we have ten days after the Monday hearing in which to present written testimony. This undoubtedly is our best approach. If you would contact me next week, we will figure out a procedure for accomplishing this.

Thanking you for this and any other favors, I remain

Sincerely,

Curtis T. Eaton

Curtis T. Eaton, Chairman of the Board
and President

HAYDEN LAKE IRRIGATION DISTRICT
Post Office Box 162
Hayden Lake, Idaho 83835

January 8, 1981

TESTIMONY OF BILL BATEY, CHAIRMAN BOARD OF DIRECTORS, HAYDEN LAKE IRRIGATION DISTRICT, KOOTENAI COUNTY, IDAHO ON MODIFICATION OF THE 1902 RECLAMATION ACT TO BE PRESENTED BEFORE SENATOR JAMES MCCLURE OR HIS REPRESENTATIVES JANUARY 11, 1982 AT BOISE, IDAHO.

Mr. Chairman and Members:

Our District comprises of 1558.86 acres of ground and 469 users of farmstead water. A small district but we do have several owners who have had to move to take jobs more than fifty miles from their homes; they do not want to sell and have rented until such time as they can retire or find jobs enabling them to return.

At the same time various families visiting our region have bought homes for retirement and rented them until they can return. These tracts are from one-third an acre to several acres and if the 1902 act is not amended the directors will have to refuse water to these renters in turn making the rentals worthless. The owners will have to continue paying irrigation water and taxes with no return. I believe this would call for a forced sale and a sharp reduction in land values causing undue hardships on the owners who I believe have every intention of returning to their homes at some future date.

I thank you for the opportunity to express my views and hope that the 1902 Reclamation act will be modified soon.

Sincerely,

HAYDEN LAKE IRRIGATION DISTRICT

Bill Batey

Bill Batey
Chairman
Board of Directors

BB/ah

IDAHO BANKERS ASSOCIATION
P.O. Box 638, Boise, Idaho 83701

January 11, 1982

Senator James McClure
Boise, Idaho 83701

Dear Senator:

We hand you here the Statement of the Idaho Bankers Association concerning amendments to the Reclamation law.

Very truly yours,

Berne K. Jensen

Berne K. Jensen
Executive Director

Mr. Chairman:

This statement is offered to your hearing on behalf of the Idaho Bankers Association, which represents Idaho's 27 commercial banking institutions.

The basic strength of Idaho's economy is based upon agriculture, and legislative or regulatory action affecting agriculture can have either a positive or a negative effect. Enforcement of the existing law could be devastating to the economy of our State, and as a result we applaud your efforts, as well as others to effect some modernization of the Federal Reclamation Law. This law has served our State well, and too many of us have relied on a belief that the United State Government would never change its position on long established practices of operation, which have grown as the result of changes of operation, changes in the economy, changes in equipment, and many other changes which could not be predicted in 1902.

We believe there are no magic limitation figures. The limitations provided in S-1867 could very well be the best answer, and we would urge this as a place to start, with the understanding that if they become unworkable, onerous, or unfair that Congress not wait another 80 years to bring about the changes you are seeking.

We would also likewise approve of the proposal for leasing limitations by applying the same logic.

We also believe that repeal of the residency provisions are appropriate. Many operations that are of great value to the economic well-being of our State and the nation, would be adversely affected without this repeal.

Idaho's banks appreciate the contribution made to the economy and prosperity of our State by agriculture, and invest heavily in this segment of our economy. We would urge that Congress make the changes proposed so that we will not be faced with the prospect of changes of position by governmental agencies that have been relied upon for many years.

DEPARTMENT OF INTERIOR

BUREAU OF RECLAMATION

Public Hearing - Proposed Acre Limitation Rules and Regulations

Field Hearing - Bureau of Reclamation,
Western Idaho Fair Grounds
Boise, Idaho

November 21, 1977

MR. CHAIRMAN, LADIES AND GENTLEMEN:

It is my privilege to appear before you today representing the Idaho Bankers Association directly--and indirectly, and perhaps more importantly the agricultural interests of the State of Idaho.

The application of the proposed regulations could be most serious in terms of Idaho's economy. Over 40 years of systematic and erractic application and non-enforcement of the Land Limitation provisions of this 1902 Act have been relied upon by a major part of our irrigated farm economy. This irrigated farm economy has developed in reliance on such systematic non-enforcement by the federal government.

All seem agreed that the 160 acre limitation in the 1902 law is antiquated at best. Proposed changes have been introduced in bill form in the Congress during the last 20 years. Recent statements by the President of the United States and the Secretary of Interior that the law needs to be changed, no proposal has been forthcoming from the Administration.

In the resolution adopted by the western governor's conference on September 2, 1977, in Anchorage, Alaska, an interesting comment appeared in the background material. The background indicated "The purpose of the original 1902 Reclamation Act was to basically take care of unemployment in the east." While we do not think that you can saddle unemployment problems in the east with the reclamation movement, certainly the enforcement of the 160 acre regulations will have an equally drastic economic impact in the west today.

Since 1902, there has been a change in technology on the farm as there has been an increase in demand for farm products. The world's population is growing at an accelerated rate and with the threat of famine, America's farm products, play a more important role in the world economic picture. In fact, in recent years agricultural exports have been the greatest factor in keeping this country from bankruptcy because of the balance of payments problem.

Probably more importantly to those people on the farm, and to their bankers, fertilizer dealers, seedmen, equipment dealers, and others who serve the agricultural community in southern Idaho is turnaround in the enforcement picture. While I recognize that court decisions may have precipitated the current promulgation of the regulations, or directives to water users, it seems that the proposed regulations go beyond other than what was ordered by the court. But inspite of the court orders, there has been 40 years of reliance on non-enforcement. Contracts have specifically stated the nonapplication of the Federal Reclamation Law excess land provisions. Many congressional exemptions have been obtained by certain projects with enough political pressure to get exempted in that manner. Those without political clout, who do not have congressional exemptions for their projects, are now looking at problems created both by the new regulations concerning excess lands, and the far greater problems when the final regulations applicable to residency regulations are promulgated.

Many of the contracts pertaining to water from federal reservoirs in Idaho contained an option which allowed the individual landowner, or an individual irrigation entity to pay out and then be excepted from the 160 acre restrictions. The federal court in California now has emasculated that contract provision. Notices have been received in the Magic Valley and elsewhere that inspite of the fact that contract provisions allowed the landowner to pay out their proportionate part of the irrigation allocation on federal projects so as to get rid of the restriction, that no water from federal reservoirs will be delivered to excess lands in 1978. The court now directs the Bureau to enforce the excess land provisions even if water from federal reservoirs constitutes only a tiny share of the total water supply in an irrigation system under commingling interpretation.

Again be reminded that 40 years of nonenforcement would create legal estoppel (except against the federal government). The regulations impose land reforms rather than promote elimination of abuses insofar as federal subsidies are concerned.

In the case of many projects in southern Idaho, predominantly the American Falls project, many of the users who obtained waters from that reservoir paid their money in advance to the goverment prior to construction and interest on the bonds on the private market. Money was paid in advance to the Secretary of Interior to encourage him to construct the project. Interest was paid to bondholders and essentially no federal interest subsidy was obtained. In the replacement, a private financing proposal has been approved and the landowners will again pay interest on the private market for the reconstruction of the American Falls Dam. Similar procedures were followed by Interior and Bureau people in the construction of other early reservoirs such as Jackson Lake.

Idaho's farms are family farms. While we are sure that it is not the intention of the regulations to promote collective farms, (in the venacular of the Russian system) the result may well be the same. Many farmers who have been threatened by the imposition of the new regulations will have difficulty in obtaining financing for coming years. What is the status of existing mortgages on excess lands? What will happen to the farmer when he seeks his operating loan for next year? What does his financial statement now look like to obtain money for next year's operation? Is it filled with asterisks?

Those owners who would be deemed in excess under the present regulations in Idaho by in large are family farmers. Through several generations of family initiative and hard work they have acquired lands so that they can keep pace with living costs and inflation to meet the needs of a growing family. There are very few abuses by publicly held corporations in Idaho. Remember that a family farm corporation is a modern, convenient, and progressive way for a family farmer to operate.

It seems that the only way the credibility of the United States Government could be maintained in this particular situation is for the Administration to prepare, have introduced, and support a bill in Congress that would legislatively approve 40 years of nonenforcement which the government has permitted. As to future projects, it would seem plausible that the basic entitlement should be increased to reflect today's farming practices and requirements and perhaps 640 acres or 1,000 acres would be a better number than the 160 acres. Future project contracts should also a right for the individual landowners to pay out and pay back the government's investment for the purpose of eliminating the restriction of the excess land provisions. Any requirements as to residency should be eliminated. In many cases, residency will effect more severely those who are in compliance with the present basic entitlement than those who are not.

As we understand the Reclamation Law of 1902, it does not speak to leasing and there is no restriction on leases. Yet the new regulations talk to this in an attempt to limit the amount of land that can be leased by an eligible lessee. This will cause hardship in many cases in Idaho.

Probably the worst problem that the regulations create is that which concerns water which is commingled with natural flow waters or waters from nonfederal sources. A district who receives the 5% of their water from a federal reservoir is deemed by the regulations to be in violation if the owner owns more than 160 acres. This approach is ridiculous at best and interpretation should be made that the land limitation, if it must be applied, would be applied only in situations where the full water entitlement is delivered from a federal reservoir, or not until 50% is federally supplied.

To date the divestiture rules applied to recordable contracts by the Bureau of Reclamation have promoted speculation.

Couple these problems with the fact that the Congress has specifically exempted a major portion of the lands under federal reclamation projects, or has made other interpretations which would eliminate enforcement as to other projects. There has been an inconsistent pattern of enforcement of the law which is tantamount to non-enforcement.

Without dwelling on tax ramifications, family planning overtones, the restrictions of the regulations will emasculate the western farm economies in many states.

For the banker talking to his clients in 1978, the regulations put in doubt the mortgage he may have on the farmland, the value of a security agreement he might obtain as security for his operating loan debt, the viability of the client to survive an inflationary economy. To apply the limitations is to insure the impossibility for many Idaho citizens to make a decent living in the operation of a family farm, even though they are in excess of 160 acres.

In many cases, 160 acre farm unit is most inefficient. A farmer is restricted in his ability to utilize labor saving machinery and to maximize his cost while minimizing his income. Since he is compelled to sell his crops in a depressed yet competitive market, he must compete or try to compete with producers from other areas who have much lower costs per acre, which result from the economies of their large scale operations. The restricted family farmer is at a tremendous disadvantage. In addition, there are just not enough experienced farmers available. If we put inexperienced, untrained, and underfinanced individuals on the 160 acre farms as a result of these regulations, the majority simply will not make it.

If anyone thinks that dismemberment of farms back to the 160 acre basic entitlement promote lower prices and a more efficient farm economy in America, they are sadly mistaken. In fact, in this witness' opinion, such a dismemberment will not only increase prices to the consumer, but will precipitate future failures. Let's assume that someone pays $250,000 for 160 acre farm -- the market value in my valley. Let's assume they must have at least $200,000 to start their operation. A minimum cash investment must be at least $50,000 and when you add the repayment of this amount including annual interest payments, property taxes, production costs, and other expenses, he falls behind each year. The larger farmer, able to operate a more efficient farm, can purchase the necessary labor-saving machinery. He can compete in the market where traditionally low prices are offered for his crops, but because of the economies that he can promote in his operation, can survive. The small farmer, contemplated by the objectives of these regulations, will find himself in a position where annually his costs exceed his gross revenue. It has been stated on several occasions that there are more members in Congress from Manhattan Island than there are from the Rocky Mountain states. Although the members of the Congress from Manhattan Island may not now see the wisdom of the federal water resource investment, double the prices for lettuce, or triple the prices for beans, or put potatoes at $1.00 a piece in the supermarkets in New York, and he too will believe in the federal investment and western irrigated farming. He is not to be concerned about how many people farm how many acres, his concern is the price that his people will pay for the products in the supermarket. In my opinion, if the present proposed regulations are enforced, we will see not only small increases at the supermarket, but within several years you will see drastic increases.

Mr. Chairman we have herewith attached some supporting information which we urge you to peruse and which we feel well establishes the vital role agriculture plays in the economic well being of the State of Idaho as well as that of these United States.

I am sure that it is not the goal of the federal government to depress the farming economy further, and we are encouraged by the Commissioner's announcement in Yakima that the Administration will introduce and support remedial legislation.

IDAHO STATE INCOME

1975

Source: Boise State University
Dr. Don Holley
385-3351

	1972 CONSTANT DOLLARS		1975 CURRENT DOLLARS	
GROSS Income (expressed in millions of dollars)	4,244.0		5,300.0	
Agriculture	755.0		865.0	
Manufacturing	609.0		815.0	
Lumber		246.0		302.0
All food processing & mfg.		147.0		222.0
Chemical		34.0		58.0
All other		182.0		233.0
Mining	48.0		98.0	
Contract Construction	238.0		322.0	
Transportation, Communications & Utilities	361.0		430.0	
Wholesale & Retail Trade	736.0		950.0	
Finance, Insurance & Real Estate	455.0		517.0	
Services	418.0		527.0	
Government	633.0		782.0	

IDAHO AGRICULTURAL STATISTICS

1977

UNITED STATES DEPARTMENT OF AGRICULTURE
Statistical Reporting Service

William E. Kibler, Administrator

Cooperating with

IDAHO DEPARTMENT OF AGRICULTURE

Wilson "Bill" Kellogg, Director

Compiled by

IDAHO CROP AND LIVESTOCK REPORTING SERVICE
USDA Statistical Reporting Service
Box 1699, Boise, Idaho 83701

Richard C. Max, Statistician In Charge
Howard L. Bossart, Ass't. Statistician In Charge

This year, as in the past, we have tried to present the agriculture story in pictures and figures. In agriculture the basic ingredients are soil and water, and during the last two years Idaho has had its share of water problems. We are using a full page at the end of this bulletin to bring you a picture sequence of the Teton Dam as it was breaking.

The work of providing accurate data to agriculture continues to be directly dependent upon the voluntary cooperation of Idaho farmers, ranchers, county agents, and many others in agriculture who furnish the raw data for our reports. I want to express our sincere appreciation to them for their contribution to the entire industry.

This publication is a result of the continuing cooperative effort and a memorandum of understanding between the Idaho Department of Agriculture and the Statistical Reporting Service, USDA. It provides the official crop, livestock, price and related agricultural statistics needed by the agricultural industry at minimum cost through this joint Federal-State effort.

A special thank you to the Idaho Dairy Products Commission, to Bill Grange for his help in picture selection, and to Billie Brush who spent many hours assembling the material.

Sincerely,

Richard C Max

Richard C. Max
Statistician In Charge

IDAHO'S RANK IN THE NATION'S AGRICULTURE — 1976

Commodity	Rank Among States	Production	Unit	Percent of U.S.
CROPS				
Potatoes	1	85,175,000	Cwt.	24.1
Dry Edible Peas	2	826,000	Cwt.	38.4
Merion Kentucky Bluegrass Seed	2	264,000	Lb.	24.6
Alfalfa Seed	3	9,620,000	Lb.	12.4
Sugar Beets	3	2,879,000	Ton	9.8
Dry Edible Beans	3	2,655,000	Cwt.	15.4
Hops	3	5,160,000	Lb.	8.9
All Mint	3	449,000	Lb.	8.3
Prunes and Plums (fresh)[1]/	4	5,500	Ton	8.0
Barley	4	43,200,000	Bu.	11.5
Onions	5	2,831,000	Cwt.	8.2
Green Peas for Processing	5	19,650	Ton	4.0
Sweet Corn for Processing	6	162,850	Ton	7.4
Sweet Cherries	7	2,450	Ton	1.5
All Wheat	10	68,320,000	Bu.	3.2
Apples	10	125.0	Mil. Lb.	2.0
All Hay	11	4,201,000	Ton	3.5
Red Clover Seed	13	713,000	Lb.	2.0
LIVESTOCK				
All Sheep and Lambs[2]/	9	503,000	Head	4.0
Honey Production	14	4,251,000	Lb.	2.1
Milk Production	20	1,554,000	Mil. Lb.	1.3
Milk Cows[3]/	21	143,000	Head	1.3
All Cattle and Calves[2]/	25	1,900,000	Head	1.5

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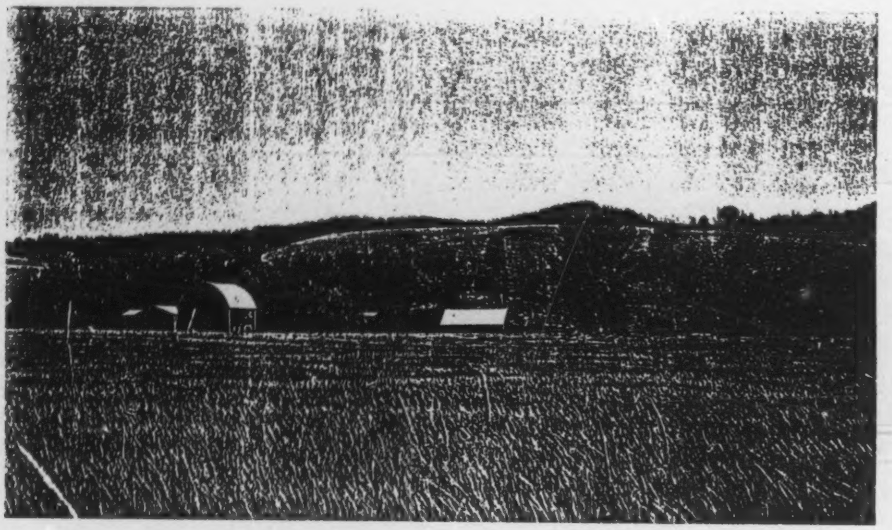
[1] Includes only Idaho, Washington, Michigan and Oregon — fresh basis

[2] January 1, 1977 inventory

[3] Average number during year, excluding heifers not yet fresh



AGRICULTURAL BANKER
SM

Special Supplement

AMERICAN
BANKERS
ASSOCIATION

July 1977

IDAHO

On January 1 of this year 23 of the 24 banks in Idaho held farm loans totaling $415,999,000.

	Volume Held 1/1/77	Percent Change From 1/1/76	Percent Change From 1/1/72
NON-REAL ESTATE:			
Banks	$ 401,985,000	17	*
Production Credit Associations	226,230,000	13	*
Federal Intermediate Credit Bank	1,520,000	9	**
Farmers Home Administration[1]	42,590,000	22	62
Total[2]	$ 672,325,000	16	*
REAL ESTATE:			
Banks	$ 14,014,000	31	*
Federal Land Banks	455,525,000	20	*
Life Insurance Companies	133,888,000	7	-5
Farmers Home Administration[3]	134,892,000	10	**
Individuals and Others	369,627,000	6	51
Total	$1,107,948,000	12	84

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[1] Includes Operating, Emergency and Economic Opportunity Loans

[2] Does not include loans held by nonreporting agencies such as merchants and dealers

[3] Includes direct and insured farm ownership, housing on farm property, oil and water conservation, grazing and irrigation and drainage associations. Does not include direct Rural Housing Loans.

*Over 100%

**Over 500%

NATIONAL

Farm Loans Held by United States Lenders Plus Changes, January 1, Selected Years[1]

	Volume Outstanding (In millions of dollars)				Percent Change In Volume		
	1967	1972	1976	1977	Past 1 yr.	Past 5 yrs.	Past 10 yrs.
NON-REAL ESTATE:							
Banks	$ 8,533	12,498	20,160	23,283	15	86	172
Production Credit Associations	3,016	6,078	10,773	12,2[illegible]3	14	101	305
Federal Intermediate Credit Banks[2]	157	237	350	368	5	55	134
Farmers Home Administration	738	771	1,772	1,877	6	143	154
Individuals and Others[3]	7,350	5,060	6,350	6,950	9	37	-5
Total	19,794	24,644	39,405	44,711	13	81	126
REAL ESTATE:							
Banks	$ 2,770	4,218	6,296	6,781	8	60	144
Federal Land Banks	4,914	7,880	15,950	18,455	16	134	275
Life Insurance Companies	5,214	5,564	6,533	7,270	11	30	39
Farmers Home Administration	1,663	2,618	3,369	3,655	8	39	119
Individuals and Others	8,516	11,927	18,728	19,895	6	40	133
Total	23,077	32,207	50,876	56,056	10	74	143
GRAND TOTAL	42,871	56,851	90,281	100,767	12	77	135

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[1] 50 States excluding possessions

[2] Loans discounted for OFIs

[3] Merchants, dealers, individuals, and other nonreporting groups

Source: Economic Research Service, USDA

Farm Loans Held by All Banks by States as of January 1, 1977, with Comparisons
(In Thousands of Dollars)

State	Non-Real Estate	% Change 1976-77	Real Estate	% Change 1976-77	Total	% Change 1976-77
Maine	$ 16,229	-1	$ 7,335	40	$ 23,564	-17
New Hampshire	3,333	0	7,534	7	10,687	3
Vermont	18,736	3	23,661	0	42,397	1
Massachusetts	9,183	-10	23,614	-7	32,797	-8
Connecticut	11,754	11	5,764	67	17,518	-37
Rhode Island	105	-86	901	38	1,006	-55
New York	308,151	10	117,739	-3	425,890	6
New Jersey	9,680	9	14,227	-30	23,907	-18
Pennsylvania	248,170	-3	260,133	9	508,303	3
Maryland & D.C.	54,680	15	66,419	-17	121,099	-5
Delaware	7,194	29	16,614	-49	23,808	-38
Michigan	334,038	19	172,005	8	506,043	15
Wisconsin	576,954	13	433,980	14	1,010,934	13
Minnesota	1,202,664	12	225,269	13	1,427,933	12
NORTH-EAST—Total	**2,800,871**	**11**	**1,375,195**	**4**	**4,176,066**	**8**
Ohio	347,070	10	376,627	14	723,697	12
Indiana	643,642	16	434,038	21	1,077,680	18
Illinois	1,598,136	18	445,210	22	2,043,346	19
Iowa	2,442,757	19	283,895	21	2,706,652	19
Missouri	896,596	20	381,126	13	1,277,722	18
CORN BELT—Total	**5,908,201**	**18**	**1,920,896**	**13**	**7,829,097**	**18**
Virginia	149,057	-5	123,850	2	272,907	-2
West Virginia	28,778	-6	67,655	12	96,433	6
Kentucky	355,195	11	351,064	4	706,259	7
North Carolina	215,184	24	109,683	21	324,867	23
South Carolina	63,394	19	40,395	14	103,789	17
Tennessee	246,284	7	300,417	5	546,701	6
Georgia	272,840	17	314,757	-4	587,597	4
Alabama	231,615	16	161,193	-2	392,808	8
Mississippi	244,474	4	199,360	7	443,834	5
Arkansas	305,841	9	230,484	-1	536,325	5
Louisiana	187,695	6	134,929	9	322,624	7
Florida	160,846	9	121,208	-15	282,054	-3
SOUTH—Total	**2,461,203**	**10**	**2,154,995**	**2**	**4,616,198**	**6**
North Dakota	586,652	12	71,589	11	658,241	12
South Dakota	716,747	9	35,699	4	752,446	9
Nebraska	1,755,772	25	81,377	29	1,837,149	25
Kansas	1,551,874	19	163,730	16	1,715,604	19
Oklahoma	871,796	11	192,407	14	1,064,203	12
Texas	1,815,923	16	383,642	-5	2,199,565	11
PLAINS—Total	**7,298,764**	**17**	**928,444**	**6**	**8,227,208**	**16**
Montana	450,600	14	23,605	-5	474,205	13
Idaho	401,985	17	14,014	31	415,999	17
Wyoming	223,601	17	13,974	21	237,575	17
Colorado	654,920	24	37,632	34	692,552	24
Utah	101,795	26	15,677	7	117,472	23
New Mexico	169,882	10	23,856	26	193,738	12
Arizona	269,926	-11	4,244	47	274,170	-11
Washington	423,341	28	35,345	18	458,686	27
Oregon	227,814	29	24,407	56	252,221	31
Nevada	15,340	8	1,780	153	17,120	14
California	1,860,203	15	203,487	0	2,063,690	13
Hawaii	14,025	44	3,147	-3	17,172	32
Alaska	41	-1583	712	-40	753	-60
WEST—Total	**4,813,473**	**19**	**401,880**	**10**	**5,215,353**	**16**
U.S. TOTAL	**$23,282,512**	**15**	**$6,781,410**	**8**	**$30,063,922**	**14**

Source: Economic Research Service, USDA

Idaho Environmental Council

P.O. Box 1708
Idaho Falls, Idaho 83401

Testimony of Russell A. Brown
on the Reclamation Reform Act of 1981
for
the Senate Natural Resources and Energy Committee

January 1982

Reform of the Reclamation Act of 1902 is needed. However, the proposed legislation would not be a reform; it would instead provide legality for the practices which have been used to circumvent the purpose of the law. Subsidies in excess of $2 million per year could be provided to farm operations which are many times larger than those needed to support a family. The potential amounts and distribution of subsidies allowed by the proposed "reform" provide a clear picture of legislation which would enrich the few at the expense of many. Effective reform of the Reclamation Law can be accomplished, but it must be done from the perspective of correcting flaws rather than the licensing of past abuses.

The original Act provided for entry on no less than 40 acres and no more than 160 acres, with the final decision to be made by the Secretary on the basis of what was "reasonably required for the support of a family". In support of the legislation, Congressman Jones of Washington said, "the great object of this bill is to furnish homes for the homeless and farms for the farmless" (35 Congressional Record, p. 6755, 1902).

- The purpose was encouragement of settlement, not establishment of subsidy.
- The key qualification was "reasonably required for support of a family". That stipulation, combined with current data on farm income and acreage, can provide a fair basis for reform.

Acreage Distribution

What is the present situation in the use of reclamation water on farms? The Draft Environmental Impact Statement on Acreage Limitation, (DES-81-1) prepared by the U.S. Department of Interior, provides data. The report includes an analysis for all 17 Western States (Westwide) served by federally developed water and a separate analysis for the Westlands Water District in central California.

TABLE 3.4 DISTRIBUTION OF FARM OPERATIONS AND ACREAGE BY SIZE OF FARMS, WESTWIDE

Size of Farm Operations (acres)	Number of Farm Operations	Cumulative Percent	Irrigable Acres	Cumulative Percent
1-160	35,498	74.5	1,948,320	23.0
161-320	5,810	86.7	1,343,859	39.0
321-640	4,494	96.1	3,013,683	62.8
641-960	607	97.4	487,420	68.6
961-1,280	399	98.3	433,463	73.7
1,281-1,920	396	99.1	605,275	80.8
1,921+	435	100.0	1,618,630	100.0

Given the present administrative practice, a family can own up to 640 acres of reclamation land. Using 640 acres as a reference point, Table 3.4 shows that 96.1% of all reclamation farm operations meet that standard. Only 3.9% of all reclamation-served farms exceed 640 acres.

Table 3.4 further shows that:

- the 45,802 farms (under 640 acres) have an average size of 116 acres
- the 1,837 farms (over 640 acres) have an average size of 1,711 acres.

These data show that the present draft of the proposed legislation (which allows combined ownership and licensing of as much as 3200 acres) would legalize federal subsidies of a small number of large landowners. The majority (96.1%) would not be affected.

Subsidy Levels

The magnitude of the subsidy to the present large landowners can be estimated by use of the Westwide subsidy and acreage data provided in Attachment II, Tables A and D, of the DEIS. Combination of acreage and subsidy data yields a total subsidy of $1.534 billion per year for 1.838 million acres, or an average value of $834/acre. While site-specific data would provide an exact basis, the $834/acre value leads to the following results:

Farm Size	%	Average Size	Average Annual Subsidy
1-640 acres	(96.1%)	116 acres	$ 96,700
640+ acres	(3.9%)	1711 acres	$1,427,000

In the Westlands District (DEIS Table 3.13, p. 3-73) the average farm size is now 2,249 acres; the subsidy level (Table D) is $1422/acre. The average subsidy in Westlands is $3.2 million per year per farm. The Westlands Water District now receives $677,000,000 of federally-subsidized water per year. The present crop value in Westlands is only $299,000,000. The federal subsidy is more than double the value of the crops produced.

Farm Income

The Acreage Limitation DEIS states (p. 3-16), "at 320 acres" (Westwide) "or larger, all farms in the field crops districts were relatively prosperous when compared to the 1978 national average." The data of Table B (p. II-ii) indicate a net on-farm income of $35,000/year for a 320-acre farm and $50,000/year for a 640-acre farm.

No justification for expansion of the acreage limitation to 3200 acres (1600 owned/1600 leased) can be found in farm income data. Even a 320-acre reclamation farm produced three times the 1978 average net farm income of $10,037.

SUMMARY

The Idaho Environmental Council supports:

- Strict residency and participation requirements
- A 160-acre limitation per person maximum for all owned and leased lands
- Application of Reclamation Law to Corps projects
- Full cost (not the present artificially low cost) for water delivered to all acres over the limitation.

The proposed legislation offers incredible subsidies to those few landowners who exceed the present acreage limitations. There is no justification for water-welfare for the rich. Expansion to a 3200-acre limit would result in multi-million dollar subsidies to landowners who already earn five to ten times the average American's income. Reclamation law has been warped, abused, and corrupted during the eighty years since its passage. But that dismal history offers no excuse for the proposed Reclamation Reform Act of 1981. The words of Congressman Hepburn of Iowa, spoken in 1902, still ring true, "This bill is the most insolent and impudent attempt at larceny that I have ever seen embodied in a legislative proposition...... They ask us.... to give away an empire in order that their private property may be made valuable.... We might as well put our hands into the Treasury and take it out."

NOBLE DITCH CO., LTD.

KENT W. GIST, SECRETARY
PHONE 208 - 452-3543

P. O. BOX 349
FRUITLAND, IDAHO 83619

TESTIMONY OF CECIL E. HILL, CHAIRMAN OF THE BOARD OF DIRECTORS, NOBLE DITCH CO., LTD., ON MODIFICATION OF THE 1902 RECLAMATION ACT BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE, SENATOR JAMES McCLURE, CHAIRMAN

January 10, 1982

Mr. Chairman:

My name is Cecil E. Hill. I am Chairman of the Board of Directors of the Noble Ditch Co., Ltd., of Fruitland, Idaho. Our irrigation company serves about 8,250 acres of land in Payette County, Idaho. At the present time, none of this land is involved with Bureau of Reclamation projects. We have, however, applied to purchase storeage space in Cascade Reservoir, and are concerned about provisions concerning the comingling of water. We are also concerned about the size of a viable unit of farm land, as well as maintaining reasonable and attractive opportunities for private enterprise to continue the past successes of American farmers. We offer the following comments:

1. Residency

We appreciate the need for some residency requirements, so far as control of non-resident or foreign investments are concerned. We do, however, believe that any owner who has personally operated and developed a family farm unit should have the opportunity to live wherever he chooses upon retirement from farming, without having to dispose of the only retirement plan that is usually available to a farm family, or a surviving spouse. Also, the heirs of those who have spent a lifetime acquiring such property should not be required to sacrifice their inheritance merely because they do not choose to stay within 50 miles of the old home ranch.

Sec. 102. Equivalency

We agree with the provisions as contained in S1867.

Sec. 103. Recordable Contracts

page 2, Cecil E. Hill, testimony on 1902 water act revision

NOBLE DITCH CO., LTD.
KENT W. GIST, SECRETARY
PHONE 208 - 452-3543
P. O. BOX 349
FRUITLAND, IDAHO 83619

We agree with the provisions as set forth in S1867.

Sec. 105. Leasing

We believe that leasing should not be subject to the acreage provisioms of this act. We believe that any qualified owner should be free to lease his land to any bona fide lessee of his choice, so long as no other provisions of this act are violated.

In general, we agree with most of the provisions of S1867, except that we would recommend that no individual entity which is a part of a larger project should be permitted to pay outstanding indebtedness to the Bureau of Reclamation unless the entire project should elect to pay that indebtedness ahead of schedule.

Also, we urge that provision be made in S1867 to exclude application of acreage and other limitations where comingled water is concerned, so long as the comingled water is less than 25% of the total water involved. In our own case, the source of our water is not from a Bureau of Reclamation project, and we do not feel that an arms length purchase of storeage space in Cascade Reservoir should put our entire project under the terms of any Bureau of Reclamation legislation.

We wish to express our appreciation to the sponsors of this legislation for this effort to bring some order to the chaos that presently exists in the administration of the Bureau of Reclamation projects. We believe that individual initiative and good management should be rewarded by being reasonably secure in the knowledge that those efforts will not be taken away at some future time by bureaucratic fiat. We also believe that the Bureau of Reclamation should be fair, and realistic, in setting the payback charges on all their projects. We do not ask for "something for nothing", but only for fair and equitable treatment under the law.

Mr. Ed Uhlig
Route #1
Hansen, Idaho 83334

January 7, 1982

Honorable James McClure
U. S. Senator
Chairman, Energy and Natural Resources Committee
149 Borah Station
Boise, Idaho 83702

RE: 1902 Reclamation Act Revisions - Boise, Idaho Hearing

Dear Senator McClure:

I have spent 40 years putting together a workable farm and cattle feeding operation. This was done by purchasing land that was unsuccessfully dry farmed first, and then was mostly sold for taxes. I also lease land that went through the same process. The water was acquired from land that was too rocky, rough or seepy to farm. This land lies on the uphill side of the Twin Falls Main Canal. Therefore, the water has to be pumped up the slope to various lands which requires several pumping stations.

All waste water is re-used, like an EPA dream. There are miles of buried pipe, all interconnected. This all is engineered to operate as a unit. The cattle pens and all the various storage buildings are built to match the farm. So are the houses.

To divide this outfit would demolish 40 years of slow growth for myself and my wife. We could most likely survive, but what about our tenants, their families, their employees, our employees and the widows that we lease the land from? We all have lots of money borrowed. How do we pay off? There must be a better way. I believe your Senate Bill No. S-1867 is the most reasonable approach to changing the 160 limitation that I have seen offered. I would also request that your legislation provide for the automatic validating of all contracts with the government and secretarial exemptions so that we can rely upon, and bind the government to, its word.

Yours truly,

Ed Uhlig

ED UHLIG

Mr. George L. Coiner
Route #1
Hansen, ID 83334

January 7, 1982

The Honorable James McClure
U. S. Senator
Chairman, Energy and Natural Resources Committee
149 Borah Station
Boise, Idaho 83702

RE: 160 Acre Reclamation Law - Boise, Idaho Hearing

Dear Senator McClure:

I am writing to express my concern with the proposed revisions to the Reclamation Act of 1902. I cannot believe that the purpose of the Reclamation Act was to confiscate all but 160 acres from family farmers. I certainly do not feel that such a limitation is justified. Senate Bill S. 1867 co-sponsored by yourself represents a much more reasonable approach. Even your proposal of limiting owned acres to 1,600 acres is conservative considering modern farming practices which are essential to remaining competitive. If such a limitation was enforced, I would recommend that additional acres be allowed which could include a pay-back of costs to the government if such is necessary.

I am of the belief that the Reclamation Act of 1902 was to assist the family farmer like myself. It should not now be used to confiscate land which I have worked hard and long to make productive. In an effort to break up the large landholding corporations in California and elsewhere, the revisions previously proposed would, in effect, penalize the Idaho farmers who are trying to make a decent living.

Since I am presently unaware of all of the actual provisions of the bill you are co-sponsoring, I would like to make some general comments on subjects I would hope any final bill would include.

Equivalency. A Class 1 land should be established with lands of lesser productive essential being augmented to reach a Class 1 production potential. Such a provision is an absolute necessity in order to equalize the effect of the Reclamation Act on all farmers. The equivalency adjustments must be applied on a nationwide basis to assure equal treatment.

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The Honorable James McClure
January 6, 1982

Repayment. Upon repayment as required by any contracts with the Secretary of the Interior, the acreage limitations should be removed. Furthermore, in projects which never utilized any Federal funds, no acreage limitation should apply. This must include the situation where there is alleged "commingling" of water in a non-federally funded project in order to be consistent. Why should a farmer be restricted when he has paid back the government's loan or where he never received any aid from the government in the first place?

Leasing Restrictions. I honestly do not understand the need for leasing restrictions. It was not included in the 1902 Reclamation act and can hardly be argued to promote family ownership of farm land. If a leasing restriction is felt to be necessary, I support S. 1867's provision making it in addition to the ownership restriction as opposed to being cumulative therewith.

Validation. I feel that it is necessary that the government abide by its existing commitment, just as private individuals must. The United States should affirmatively validate all of its existing contracts and other commitment, which it has made with farmers and irrigation districts. Especially important are the exceptions granted by the Secretary of the Department of the Interior. These should be automatically validated.

In summary, I would like to commend you for your efforts in the reformation of the 1902 Reclamation Act. Thank you for the opportunity to present my views on this topic.

Very truly yours,

George L. Coiner

GEORGE L. COINER

GLC:dt

January 8, 1982

The Honorable James McClure, Chairman
Energy and National Resources Committee
United States Senate
149 Borah Station
Boise, Idaho 83702

RE: 1902 Reclamation Act Provisions - Boise, Idaho Hearing.

Dear Senator McClure:

I am writing this letter to express my position of the 1902 Reclamation Act reform measures. I am a farmer from Twin Falls, County, Idaho, am married and have four sons.

First I would like to explain my position. I began farming in 1946 as an employee on one of the farms right next to where I still live. Through hard work and efforts I was able to lease 100 acres to farm for myself in 1951. Through the years I have been fortunate enough to be able to purchase approximately 190 acres for myself and an additional 120 acres which is owned by my family corporation. All of my four sons participate in the ownership and operation of the farm. It was a proud moment for me to be able to include all of my family in a single family operation. That is what I have worked for all my life, and it has finally come true.

My boys each have families who are young at this point. It is the future of my four sons and my twelve grandchildren that I have attempted to provide for in my efforts to increase the size of my family farming operation. Now the Department of Interior is trying to disrupt our whole family plan.

The family corporation, in addition to owning 120 acres, also owns all the equipment which we utilize in our farming operation. It is not worthwhile to list all the various pieces of equipment that we own, but we do most of our farming ourselves and use very little custom farming. We do hire numerous high school students from the area to assist us in the summer. We have several tractors of various size and capacity to assist us in our farming. It is not economical to buy the sophisticated machinery for farming if you are only farming a small unit, nor are a bunch of little machines efficient as the larger ones used in operating a larger farm. A larger farming operation is more economical and can provide food at a cheaper cost. We have also set up an irrigation system of mostly sprinklers which includes solid sets and wheel lines.

These have all been incorporated into basically a single irrigation unit. To split this up and to form several small units would not be practical from a farming viewpoint.

In addition to all of the foregoing, the corporation has a line of credit which assists us in financing our farming operation. It is through our good name and solid reputation that we have been able to maintain a line of credit of substantial size. I highly question the ability of each of my sons to qualify for sufficient financing to allow them to economically operate a farm on their own. There is no way for a young man to start off without any help in today's farming society. To give a young person a small farm of sufficient size with fixed, high costs is not doing that young man a favor. He cannot make it. At today's costs you can't even afford to replace old machinery if you can only operate a small 160 acre farm.

The alleged purpose for the 1902 Reclamation Act was to assist the family farmers. It is my belief that I am a family farmer, and that I exemplify the concept of family farming. At today's interest rates I cannot afford to purchase land to farm for myself. Economically and personally I prefer to continue to lease property which I am presently leasing and to continue my family farming operation.

There was no leasing restriction in the original 1902 Reclamation Act. I cannot believe that it was the intent of the individuals who wrote that Act, that the family farmer, such as myself, should be penalized. It is my feeling that a leasing restriction cannot be justified when you analyze it in respect to farmers like myself. For that reason, I would request no leasing restriction be put in the new Reclamation Law.

If it is the opinion of the Senate that a leasing restriction must be placed upon the farmer, this leasing restriction should be in excess of and in addition to any ownership restriction. I support Senate Bill 1867 in this regard. In this way, a farmer such as myself will be able to own some land and to provide for his children and grandchildren through the leasing of additional land.

After consulting with others concerning this matter I have been advised that it would be possible to break up my family farming operation to qualify within the Acreage Limitation. If the purpose of this Reclamation Act is to break up the family farms then it would be succeeding within that goal. Due to tax laws and other burdens of modern society it is quite often necessary to incorporate. Do not penalize the family farmer for incorporating after you have established the benefits which force the family farmers to incorporate.

Sanator James McClure
January 8, 1982
Page 3.

Last, I feel that it is absolutely necessary that the Government abide by its existing commitments. I urge you to include in your legislation a provision to automatically validate all existing secretarial exemptions as well as all existing contracts with the Government.

I commend you for your efforts on Senate Bill 1867. Please don't penalize the family farmer for trying to make a decent living.

Very truly yours,

Aubrey Cummins

AUBREY CUMMINS

AC:cj

January 11, 1982

TESTIMONY

of

C. J. MARSHALL

BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR INTRODUCTION IN THE FIELD HEARING RECORD ON RECLAMATION LEGISLATION. (S. 1867)

Honorable James A. McClure, Chairman:

My name is C. J. Marshall. I reside in Jerome, Idaho and am a farmer. I commenced farming in 1927 on a Carey Act project on which my father had made a Carey Act entry and obtained patent to land in 1905. I presently own farmlands individually and in joint ownership with my sisters and my five children. These lands receive supplemental water from reservoirs constructed under the Reclamation Act. Since I started farming, additional farmland has been purchased, at F.M.V. with water appurtenant thereto. Pursuant to contracts between the canal companies serving the lands owned by me and the United States, we have been assured that the 160 acre limitations of the Reclamation Act did not apply to the lands we own or that we could be relieved from any such limitations upon paying the outstanding obligations then due for the construction of related works under the Reclamation Act. It now appears that our reliance upon the provisions of these contracts may have been unjustified and that the United States may not be bound by those contractual commitments.

I strongly urge that the Congress of the United States amend the Reclamation Act of 1902 and Amendments thereto by the enactment of S. 1867, and in the process to consider the following:

1. Residency: That all residency requirements be clearly repealed except as may be required for homesteading lands under the Reclamation Act, and then only to the extent residency may be required to obtain patent. As has been recognized for over fifty years, a residency requirement serves no useful purpose to the administration of reclamation projects after the lands have been in production for many years.

2. Recipient qualification: In the event any amendments to the Reclamation Act place qualifications on the recipients of water from a Reclamation Project, that such restrictions be limited to corporations exceeding twenty-five shareholders. Other qualifications, such as requiring the recipient to depend upon farming for his livelihood, would eliminate many family operated farms instead of preserve them. Many family operated farms today do not provide sufficient income to be the primary source of income for a family. Outside income is required by the owners of many small farms in southern Idaho and the farm

income is merely supplementary to the major income resources of the owner. Grave injustices will be inflicted upon owners of farms of 160 acres or less if any income test is adopted as a qualification for receiving water. A farmer should not be restricted to one occupational pursuit.

3. Leasing: Restrictions on leasing should not be added to the Reclamation Act. The Reclamation Act has been administered for over seventy-five years without restrictions on leasing and very little can be accomplished by providing such restrictions at this time. Although leasing may be a valid restriction under the homestead provisions of the Reclamation Act, and such condition could be imposed upon any person attempting to homestead land under the Reclamation Act, or to persons with excess lands when project water is first delivered, after a patent has been issued to the land or the land has received project water for several years, the landowner should not be restricted as to the use he may desire for his land, including the option to lease the land. Any restrictions on leasing would severely limit the number of persons desiring to lease farmland, thereby denying an owner the opportunity to lease the land to the best possible farmer. Such a result would be contrary to the best interests of the landowner and the nation as a whole. Provisions contained

in S. 1867 to assure that the lease is bona fide are fully acceptable and probably wise.

4. Acreage Limitations: Acreage limitations, must be amended to recognize the economical farm unit of today. I do not believe that acreage limitation is a viable means to retain the family farm. Acreage limitations on the size of farms homesteaded under the Reclamation Act accomplished the general development of the project into family farm units. As well, recordable contracts on excess lands assured that water was first delivered only to the family farm units. However, a thorough review of reclamation projects consisting of lands homesteaded will show that the project was and is made up of family farms. This was accomplished by the requirement of the homestead provisions that each entryman construct a residence upon his unit. After initial development, acreage limitations serve little purpose except to curtail the natural growth of the competent and progressive farmer who is the backbone of this country. An acreage limitation of 1,600 acres is both reasonable and realistic. It will insure the family farms and at the same time have a minimum effect upon individual desire to obtain maximum efficiency.

If written contractual commitments of the United States in regard to acreage limitations are void or unenforceable, Congress should carefully consider the impact of acreage limitations on farmers and projects that have relied upon contractual commitments waiving or expanding the acreage limitation restrictions. At the very least, equitable principles of good faith require that present landowners who will not receive windfall gains as a result of the reclamation project should be entitled to an exemption from acreage limitation by pay out of all existing obligations for his proportionate share of the construction costs of the reclamation project or by a confirmation of contractual agreements previously entered into in good faith by the United Stats and the irrigation district or canal company delivering the water to the individual landowner. For Congress to do less would constitute a land reform program which would violate the most basic Constitutional rights of an individual in these United States.

5. Disposal of Lands: In the event an acreage limitation is allowed to remain as it is presently enacted or is amended to provide another acreage limitation, a careful distinction must be made in the provisions of the law controlling disposal of excess lands. It is simply impossible to compare the disposal of excess lands under recordable contracts that are entered into prior to the delivery of water to the lands, and the disposal of excess lands that have been purchased by individuals at their full market value, without any discount of whatsoever kind or

nature as a result of past or future construction assessments. At the present time in southern Idaho, comparable farm lands which are located in irrigation districts which have very little outstanding indebtedness to the United States for the construction of the project or in irrigation districts that have substantially all of the construction charges yet to be paid to the United States, or are in lands that have been privately developed by private capital, have absolutely no variance in their market value. Contrary to the widespread belief of persons living outside the area, the subsidy purportedly given to landowners receiving water from a reclamation project is nonexistent after water has been delivered to the lands and the lands have been developed for cultivation. My own experience and investigation in this regard confirm the fact that land values of comparable land in the same geographical area are comparable, without regard to any purported subsidy some lands may be receiving by reason of an interest free obligation for the construction costs of the project or related structures. S. 1867 recognizes this distinction and properly allows the disposal of excess lands at F.M.V. when obtained involuntarily, at F.M.V.

Unless Congress fully recognizes the possible effects of each proposed amendment to the Reclamation Act, irreparable damage could result to the small farmer, the very person Congress has indicated a desire to protect. If the 160 acre provisions of the Reclamation Act are allowed to remain, the agricultural industry will be severely curtailed, resulting in serious economic depression for all citizens of the United States.

Thank you,
C.J. Marshall
C. J. Marshall

Jan. 11, 1982
Boise, Idaho

Honorable Sen. James McClure
Other interested parties

I am here today to voice my objections to the proposed changes reguarding the acreage limitations in the 1902 Reclamation A ct. We all should be very much aware of the objectives and intentions of this act in provideing for family farms. The family farm has long been the backbone of our.nation's economy and well being. And well it should remain as such.

We have seen a continual decline in the number of farms and with this an increase in the size of farm operations. Increasing these acreage limitations will only enhanse this situation. It is already difficult enough for young people to get started in farming. Increasing these limitations will make land ownership for young people imposible.

Why do we need to change these acreage limitations in this Act? I believe I have heard most of the arguements favoring changing the acreage limitations of this Act. These topics range from 160 acres per individule being too smalland therefore inefficient for various reasons to changing the Act to make illeagle farm operations legal. I cannot concure with any of these debates.

Please allow me to describe my farm. I am leasing 200 acres of which 166 acres are farmable. My lease is the basic 50 - 50 crop share lease, so this gives me the income from 83 acres. To this we arepurchasing 50 acres giving us the income from 133 acres with the equipment expences for 216 acres. Gentlemen, Icertainly am not a wealthy man, but I certainly do not feel as though I am going broke! Also I might add I consider my operation to be quite typical of the farms in my area. We are certainly not satisfied with our present income, but we feel the proper way to increase our personal income is to exchange our leased land for land of our own. Increasing the acreage limitations in the 1902 Reclamation Act will only make this change more difficult than it allready is.

Now back to the debates for changing this act. I have been told we in this area are blessed with good soil, climate and growing season, and good crop choices, whereother areas served by Federal Reclamation Projects may not. The first leason my high school ag teacher taught us was adjust our operation to match the situation. Possibly these ares aremore suited to a livestock operations with more utilazation of the crop residue.

Another topic I have heard is we have paid our debt to the Federal Government, therfore we should not be governed by this Act. I remind you that without government money these projects probably never would have been developed. These projects were funded with low interest money and I beleive our obligations still remain.

I have also heard that if the Secretary of Interior enforces the present regulations of this Act and breaks up farms in excess of the limitations there will blood flowing in our canals and laterals instead of water. Anyone smart enough to farm should be well aware of the rules and regulations governing this business. Ignorance of the law is no excuse. I do beleave that if farms in excess acreage receiving federal water are to be broken up, these land owners should be allowed ample time in the present marketplace to dispose of their excess land holdings.

Several years ago I voiced my objections to changing the provisions of this Act with Sen. Church. His reply to me was he was only attempting to legalize farms that were in excess of the limitations. I would hope that is not the attitude of our people representing us now. That attitude makes as much sense to as legalizing bank robbery just because it seems to be the in thing for some people to do nowadays.

In conclusion, the discussions I have heard about 320 acres for a husband and wife farming team not being large enough in todays economy reminds of the story of two truckers hauling hay. These two fellows were buying hay for $60 a ton and selling it for $50. Joe said to Mike: We are not makeng very much money. What do you think we are doing wrong? After some thought Mike replied: Not enough volume. What we need is two more trucks! My contention is the family farm that can't make it on 320 acres probably can't do any better with more land. We do not need to change this Act. Increasing the acreage limitations in the 1902 Reclamation Act will only lead to more non-resident and foreign land ownership in this great country we have.

Thank You
Marlen Pywell
Marlen Pywell
Route 4 Box 4214
Nampa, Idaho 83651

TESTIMONY OF LEIGH CHANTRILL

Secretary and Director of Fremont-Madison Irrigation District
and
Director of Idaho Water Users Board for District # 1.

on changes of 1902 Reclamation Act,

Before the

Senate Energy and Natural Resources Committee
Chairman Senator Jim McClure and Committee Members:

I have studied your bill No. S1867 and have some suggestions that will make the bill more acceptable to the users of water from reclamation projects.

Referring to Section 102 of EQUIVALENCY your wording on line 11 on land classes, the wording "but not limited to" should be deleted. It will eliminate many problems by making the act regulations easier to administer.

Comingling has not been treated in the bill, and in our area we have irrigated family farms of 3 or 4 thousand acres who get their irrigation water from four sources. These sources are flood water rights from rivers, water rights in canals, water pumped from wells on the farms, and recharge ground water wells by the rivers. The amount of storage water on our lands in our 130,000 acre irrigation district runs from 8% on some lands to about 60% on other lands depending on the water supply during the year. Most are on the low side.

In cases where 60% of the water used on land comes from other sources the land involved should be exempt from acreage limitations.

This comingling will be part of most new projects because in most cases they will be built to supply supplemental water.

On leasing under Title III --- line 13 should read "leased land and the terms of the lease of the land which is to receive water"-- thus simplifying this procedure. Also delete lines 14 and 15.

It has been 4 years since I testified at a hearing on the rewriting of the Reclamation Law in Salt Lake City before the Commissioner Mr. Keith Higginson and others. That hearing was about 100% in favor of changing the law. I have seen Former Secretary Andrus and most others say how necessary it was to up-date the law.

Kindly consider the changes or additions I have made. Please do what you can to bring this legislation to a quick conclusion.

Thank you for your help.

Leigh Chantrill
Newdale, Idaho

[Mailgram]

WILLOWS, CALIF., *December 3, 1982.*

U.S. SENATE,
Committee on Energy and Natural Resources,
Washington, D.C.

HONORABLE SIRS: The Glenn County Board of Supervisors, Sacramento Valley of northern California, wishes to acknowledge the many benefits that have been and will be experienced by the irrigation of lands within Glenn County from the Central Valley project including those served from the Glenn-Colusa and Tehama-Colusa Canals. We also wish to endorse the principles set forth in resolution 81-12 of the National Water Resources Association and encourage the committee to include those principles in the proposed legislation on acreage limitations amending the reclamation law of 1902.

GLENN COUNTY BOARD OF SUPERVISORS.

[Mailgram]

WILLIAMS, CALIF., *December 6, 1982.*

U.S. SENATE,
Committee on Energy and Natural Resources,
Washington, D.C.

HONORABLE SIRS: The Colusa County Farm Bureau endorses the reform of the Reclamation Act in accordance with the National Water Resources Association and the Association of the California Water Agency. We also support S. 1867 and H.R. 4265.

LOUIS NANNEN,
Secretary Manager,
Colusa County Farm Bureau.

PREPARED STATEMENT OF JACK STALLINGS

My name is Jack Stallings. I am president of the El Paso County Water Improvement District No. 1, which is located in El Paso County, Tex.

Further, I personally am a third generation, fulltime farmer, and a member of several national and local agricultural organizations.

Based on my years of experience in farming and as the district's representative, I am submitting this statement to express my wholehearted support for S. 1867, introduced by Senator McClure. Further, it is my understanding that our good Senators from Texas, the Honorable John Tower and the Honorable Lloyd Bentsen, fully support this legislation. After carefully studying this bill, I believe it provides the necessary amendments to a law that clearly needs modernization. Thank you very much for allowing me to submit this statement.

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